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NAZI CONSPIRACY AND AGGRESSION

SUPPLEMENT B

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'' *of Axis Criminality*

DEPARTMENT OF STATE · UNITED STATES OF AMERICA
UNITED STATES OF AMERICA · WAR OFFICE
INTERNATIONAL MILITARY TRIALS · NURNBERG ·

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A Collection of Documentary Evidence and Guide Materials Prepared by the American and British Prosecuting Staffs for Presentation before the International Military Tribunal at Nurnberg, Germany, in the case of

THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, and THE UNION OF SOVIET SOCIALIST REPUBLICS

— against —

HERMANN WILHELM GOERING, RUDOLF HESS, JOACHIM von RIBBENTROP, ROBERT LEY, WILHELM KEITEL, ERNST KALTENBRUNNER, ALFRED ROSENBERG, HANS FRANK, WILHELM FRICK, JULIUS STREICHER, WALTER FUNK, HJALMAR SCHACHT, GUSTAV KRUPP von BOHLEN und HALBACH, KARL DOENITZ, ERICH RAEDER, BALDUR von SCHIRACH, FRITZ SAUCKEL, ALFRED JODL, MARTIN BORMANN, FRANZ von PAPEN, ARTUR SEYSS-INQUART, ALBERT SPEER, CONSTANTIN von NEURATH, and HANS FRITZSCHE, Individually and as Members of Any of the Following Groups or Organizations to which They Respectively Belonged, Namely: DIE REICHSREGIERUNG (REICH CABINET); DAS KORPS DER POLITISCHEN LEITER DER NATIONALSOZIALISTISCHEN DEUTSCHEN ARBEITERPARTEI (LEADERSHIP CORPS OF THE NAZI PARTY); DIE SCHUTZSTAFFELN DER NATIONALSOZIALISTISCHEN DEUTSCHEN ARBEITERPARTEI (commonly known as the "SS") and including DIE SICHERHEITSDIENST (commonly known as the "SD"); DIE GEHEIME STAATSPOLIZEI (SECRET STATE POLICE, commonly known as the "GESTAPO"); DIE STURMABTEILUNGEN DER N.S.D.A.P. (commonly known as the "SA") and the GENERAL STAFF and HIGH COMMAND of the GERMAN ARMED FORCES all as defined in Appendix B of the Indictment,

Defendants.

PREFACE

This Supplement B brings to completion the series of volumes on "Nazi Conspiracy and Aggression" in which the principal documents and other papers pertaining to the prosecution at Nurnberg of the major German war criminals have been made generally available to the American public.

Space limitations, made necessary by the limited funds available, have made impossible the full publication of all defense documents. The final arguments of defense counsel and defendants' final pleas summarize in considerable detail not only the defense contentions, but also the defense evidence. Both the arguments, as delivered before the Tribunal, and the pleas are contained in Part I of this volume, and they should furnish an adequate basis on which to evaluate prosecution documents and the final judgment of the Tribunal itself. Part I also includes a few defense documents which appear to have unique historical interest. The text of all defense documents, including those referred to in the final arguments of defense counsel, may of course be obtained from the official transcript of the Tribunal published by the Secretariat of the International Military Tribunal. The title of this publication is "Trial of the Major War Criminals, Nuremberg." The text of most of the prosecution documents referred to in the closing arguments will be found in prior volumes of this series.

Part II of this volume contains excerpts from interrogations conducted by the prosecution of most of the defendants and of many other witnesses. Space limitations have again made full publication impossible except in a few cases, since several hundred witnesses were interrogated in the course of almost a thousand separate interrogations, and the transcript total exceeds 17,000 typewritten pages. The passages here included have therefore been chosen as those which appear to be the most significant from the standpoint of their general historical interest, their bearing on the issues raised in the case, and in some instances, the light which they shed on the character or personality of certain defendants.

Practically all the interrogations were conducted by examiners on the American prosecution staff, headed by Col. John Harlan Amen. Almost all the interrogations of defendants were taken before trial. In the majority of cases defendants were not interrogated after they were served with the indictment on 18

October 1945. Interrogations of non-defendant witnesses, however, were taken at various times both before and during trial.

Although the testimony of most of the witnesses was given under oath, that of Goering and a few others was not. The reader may wish, in any event, to bear in mind that because of the circumstances, statements of many of the witnesses were obviously made with a view to self-vindication, and that veracity is more generally to be expected with regard to matters not touching the personal responsibility of the particular witness.

Grateful acknowledgment must be made of the assistance furnished in the selection and editing of these interrogations by former members of the American Prosecution and Tribunal staffs—Messrs. Ralph G. Albrecht, Lawrence A. Coleman, Adrian Fisher, Sam Harris, Seymour Krieger, Harold Leventhal, James Rowe, Melvin H. Siegel and Roy Steyer.

The funds which made possible the publication of this volume, as in the case of its predecessors, were made available by the Departments of State and of the Army.

28 May 1948

Charles A. Horsky
William E. Jackson
Alma F. Soller
Editors

Approved:

Robert H. Jackson
U. S. Chief of Counsel

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PART I

THE DEFENSE CASE

I. DEFENSE MOTION CHALLENGING JURISDICTION OF TRIBUNAL

[Translation from the German]

20 November 1945

To: The International Military Tribunal in Nurnberg
In re: GOERING et al.

Two fearful world wars and the violent clashes by which the peace among the states has been violated in this period between these big conflicts which have engulfed the earth have made mature this wisdom among the tormented nations; a real order among the states is impossible as long as every state has the sovereign right to wage war at any time and for any purpose. Within the last decade public opinion of the world became more and more opposed to the idea that the decision to wage war is beyond good and evil. Public opinion distinguishes between just and unjust wars. It demands that the community of nations calls to account a state which wages an unjust war and denies this state, in the event of victory, the fruits of its violation. Yes, it has been demanded that not only the guilty state is condemned and is made liable, but that beyond this, the men who are guilty of launching the unjust war should be punished by an international tribunal. In this point, one goes farther now than even the strictest legal minds since the early middle ages. This idea is the basis of the first of the three accusations of this indictment, the crimes against the peace. Humanity wishes that in the future this idea will be more than a postulate, that it will become valid international law.

But today it is not yet existing international law. Neither the statute of the League of Nations of this world organization against war, nor the Kellogg-Briand Pact, nor any other treaty which has been concluded after 1918 in that first wave of attempts to outlaw aggressive war has realized this idea. But above all, the practice of the League of Nations has been quite unequivocal in this point until the most recent time. Repeatedly the League had to decide upon the lawfulness or unlawfulness of the forceable action of one member of the League against another. But always international law has never even thought of incriminating statesmen, generals, and economic leaders of the state, using force, still less to bring these men before an international criminal court. And when, this summer, in San Francisco the new world peace organization was established, no rule of law was created under which in the future an international court will punish those persons who launch an unjust war.

As far as crimes against the peace are concerned, the present trial has therefore no legal basis in international law but is a procedure based on new penal law; a penal law which has been created only after the act. This is in contradiction to a legal principle which is cherished in the world. It has been violated partially in Hitler-Germany. This violation has been emphatically disapproved within and without the Reich. This principle is the maxim: Punishment is only possible if a law has been violated. which was in existence at the time the act was committed and which provided punishment. This maxim is one of the great principles of the states, especially of the signatory powers of the charter of this tribunal, of England since the middle ages, of the United States of America since its birth, of France since the great revolution, and of the Soviet Union. When the Control Council for Germany promulgated a recent law the restitution of this principle was ordered: No punishment without a law which already existed when the act was committed.

This principle is not a matter of opportunism but is based on the knowledge that every defendant must feel treated unjustly if he is punished under law created ex post facto.

The defense attorneys of all defendants present in court would violate their duty if they would take silently the abandonment of existing international law and the repulsion of a generally recognized principle of modern criminal law. They are not able to suppress objections, which are today openly expressed even outside Germany. This applies the more as the defense counsellors are unanimously convinced that this trial could serve the progress of the world order even to a much higher degree if the trial would not withdraw from existing international law. Where acts for which no punishment was provided at the time they were committed are involved, the procedure would have to limit itself to a comprehensive investigation of what has happened. In such a case the defense, as a genuine helper of the court, would fully cooperate. Under the impact of such judicial statement the community of law-abiding nations should then create law in order to establish punishment for such individuals who start in future intentionally an unjust war.

Furthermore, the defense is of the opinion, that also other rules of the statute are inconsistent with the legal principles: Nulla poena sine lege.

The defense feels also obligated to point out right now another popularity which differs from generally recognized principle of modern criminal procedure:

The judges are only appointed by such states, which belong to the one side of this war.

This side is everything in one: creator of the Charter, of the penal law, prosecutor, and judge. That this ought not to be so, used to be general legal opinion. The United States of America have always emphasized when international arbitration and jurisdiction was established that the bench should be filled by neutrals or by neutrals together with representatives of all parties involved.

In the permanent international court in the Hague this idea has been realized in a manner which may serve as an example.

In view of the complexity and difficulty of these legal problems the defense now moves: The Tribunal may secure from internationally recognized experts on international law an expert opinion about the legal basis of this trial which is based on the rules of this tribunal.

On behalf of the attorneys for all defendants who are present.

Dr. STAHMER

[On November 21, 1945, in the morning session, the Tribunal made the following ruling in regard to the foregoing motion. —Ed.]

A motion has been filed with the Tribunal and the Tribunal has given it consideration. Insofar as it may be a plea to the jurisdiction of the Tribunal, it conflicts with Article 3 of the Charter and will not be entertained. Insofar as it may contain other arguments, which may be opened to the Defendants, they may be heard at a later stage.

II. THE BREACH OF PEACE BETWEEN STATES AND ITS CULPABILITY

by Dr. Hermann Jahrreiss

Mr. President:

May it please the Tribunal.

The main juridical and fundamental question of this trial concerns war, which is forbidden by international law, the breach of peace as treason to the world constitution.

It overshadows all other juridical questions.

The four chief prosecutors discussed this problem in their opening speeches, sometimes as the central problem of their presentation, sometimes as a fundamental problem and indeed not without looking at it from different perspectives.

Counsel for the defense has to examine it now. From among the defense counsel, I have been asked to conduct this examination. It is true that it remains for every counsel to decide if and to what extent he feels himself in a position, as a result of my arguments, to renounce his own presentation of the question of the breach of the peace. But I have reason to believe that this possibility will be used to such an extent that the intention of the counsel for the defense, considerably to simplify technically that part of the trial which is now beginning, will be realized by my speech.

I have to deal here only with the juridical question and not with the evaluation of the hearing of evidence which has lasted for months. And I am also dealing only with the question of such law as is at present valid, not with the question of such law as could or should be demanded in the name of ethics or of human progress.

I have a purely scientific task to fulfill. Science wants nothing but the truth, knowing full well that its goal can never be completely attained and that its path is therefore without end.

I wish to thank the Secretary General of the Tribunal for having placed at my disposal the documents of a decisive nature and very important literature. Without this chivalrous assistance it would not have been possible, under the present conditions in Germany, to complete my work. The literature accessible to me was published predominantly in the United States. Knowing the vast French and English technical literature on this subject which I have studied during the last quarter of a century—I am unfortunately not conversant with the Russian language—I believe, however, that I can fairly say that no important idea is overlooked, because in no other country of the world has the discussion of our problem, which has become the great problem of humanity, been more comprehensive and more fundamental than in the United States.

It was this fact that enabled me to forego the use of the scientific literature published in the former German sphere of control. In this way even the semblance of a pro domo line of argumentation will be avoided.

Because of the short time at my disposal for this speech and, at the same time, owing to the abundance and difficulty of the problems with which I have to deal, it is not possible to read here the documents and quotations which I am using. I shall present only a few sentences. Any other procedure would interrupt the line of argumentation for the listener. I therefore submit to the Tribunal the documents and references to books in appendices to my juridical arguments. In this way, what I say can be quickly verified today, tomorrow, and thereafter.

The Charter threatens individuals with punishments for breach of the peace between states. And it appears that the Tribunal accepts the Charter as the unquestionable basis for all juridical considerations. This means that the Tribunal does not examine the question whether the Charter is, as a whole or in parts, open to juridical objections, a question which nevertheless remains open.

If this is so, why then make any statements at all here on the great fundamental legal questions?

The British Chief Prosecutor even made it the central theme of his great address to examine the relationship of the Charter, where our question is concerned, to the international public law at present valid. He justified the necessity of his arguments as follows: It is the task of this Tribunal to serve humanity, and this task could only be fulfilled by the trial if the Charter was consistent with international law, that is, if the punishment of individuals for breach of the peace between states was founded in the international law at present valid.

It is, indeed, necessary to clarify whether certain stipulations of the Charter may have created new laws and consequently laws with retroactive force.

Such a clarification is not carried out here in order to serve historical research students work. They will examine this, just as they will all the other findings in this trial, according to the rules of free science, perhaps through many years of work and certainly without limiting the ground covered by the questions and, if possible, on the basis of an incomparably greater quantity of documents and evidence.

Such a clarification is indispensable, simply for the reason that the decision as to right and wrong depends, or may depend, upon it, particularly if the Charter is considered legally unassailable.

Let us assume that it were thus: The Charter does not formulate criminal law which is already valid, but creates new and therefore retroactive criminal law. What does this signify for the verdict? Must this not be important for the question of guilt?

Perhaps the retroactive law which, for instance, penalizes aggressive war was not already fixed in the conscience of humanity at the time when the act was committed, nor was the ground even simply prepared for it there. Then the defendant cannot be guilty in the sense that he was aware of the wrongfulness of his behavior, not before himself nor before others.

Or the retroactive law was perhaps promulgated at a time when a new conscience was just beginning to take shape but was still not clear or not general. It is then in any case possible that the defendant is not guilty in the sense that he was aware of the wrongfulness of his commissions and omissions.

At any rate, from the point of view of continental European thought on penal law, the fact that a person was not aware of doing wrong is a point which the Tribunal must not overlook.

Now the question as to whether the penal law contained in the Charter is ex post facto penal law does not present any difficulties if the stipulations of the Charter are unequivocal and the prescriptions of international law to date are uncontested.

But what if we have regulations capable of several interpretations before us, or if the rules of international law are the subject of controversy?

Let us take the first: A stipulation of the Charter is ambiguous and therefore needs interpreting. According to one interpretation which can be justified, the stipulation appears to be an ex post facto law, according to another, which can be equally well justified, it does not.

Let us take the second: The regulation is clear or has been clarified by the interpretation of the court, but experts on international law are of different opinions on the legal position to date: It is not certain whether we have not got an ex post facto law before us.

In both cases it is relevant whether the defendant was conscious of the wrongfulness of his behavior.

I intend to elucidate how important these considerations are in this trial.

I shall now begin the examination. The starting points of the British and French Chief Prosecutors are fundamentally different. The British Chief Prosecutor argued as follows, if I understood him correctly:

(1) The unrestricted right of states to wage war was partly eliminated by the League of Nations Covenant and later fundamentally by the Briand-Kellogg Pact, which is the core of the world peace order which still continues to be equally valid today. War which it prohibits is a punishable violation of law within and towards the community of nations.

And the individual who has acted in a responsible position is punishable.

(2) The indictment of individuals for breach of the peace is, indeed, something new, but not only morally demanded, but also long overdue in the course of legal developments; in fact it is

simply the logical consequence of the new legal position. The Charter only appears to create new law.

And if I understood the British Chief Prosecutor correctly, he asserts:

Since the conclusion of the Pact of Paris, there is a clear legal situation, based on the whole world's uniform convictions as to what is right. Since 1927 the United States have negotiated, first with France, then with the remaining great powers, with the exception of the Soviet Union, and with some of the smaller powers, concerning the conclusion of a treaty intended to abolish war. Secretary of State Kellogg stated with memorable insistence what the government in Washington was striving for, namely:

The powers should renounce war as an instrument of national policy[1] and this without legal definitions[2] from a practical point of view[3], with purity and simplicity[4], unequivocally and without qualifications[5] or reservations[6]. For otherwise the object desired could not be attained:[7]

> To abolish war as an institution, i.e. as an institution of international law.[8]

After the negotiations had been concluded, Aristide Briand, the other of the two statesmen, from whose initiative the pact, which in Germany is often called the pact to outlaw war (Kriegsaechtungspakt), springs, declared when it was signed in Paris:[9]

"Formerly deemed a divine right and remaining in international law as a prerogative of sovereignty, such a war has now at last been legally stripped of that which constituted its greatest danger: its legality. Branded henceforth as illegal, it is truly outlawed by agreement. * * *"

According to the conception of both leading statesmen, the Paris Pact meant a change of the world-order at its very roots, if only all or almost all the nations of the world, and particularly all the great powers, signed the pact or adhered to it later on, as did actually happen.

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[1] Note of Secretary of State Kellogg to the French ambassador 27 Feb 1928, App. I, Exhibit 1, page 3, passage (2).

[2] Ibid. App. I, Exhibit 1, p. 3, passage (4).

[3] Ibid. App. I, Exhibit 1, p. 3, passage (1).

[4] Ibid. App. I, Exhibit 1, p. 4, passage (5).

[5] Ibid. App. I, Exhibit 1, p. 3, passage (2).

[6] Ibid. App. I, Exhibit 1, p. 4, passage (6).

[7] Ibid. App. I, Exhibit 1, p. 3, passage (4) and p. 4, passage (6).

[8] Note of the United States Government to the Governments of Great Britain, Germany, Italy, and Japan of 13 April 1928, App. I, Exhibit 2, p. 5, passage (1).

[9] The speech of the French Foreign Minister is printed in The Department of State, Treaty for the Renunciation of War, United States Government Printing Office. The quotation is to be found on page 309.

The change is supposed to be the following:

Up to the time of the Briand-Kellogg Pact, war had been an institution of international law. Since the Briand-Kellogg Pact war was high treason against the order created by international law.

Many politicians and scholars all over the world shared this conception. It is the definite basic conception of the unique commentary on the League of Nations Covenant by which Jean Ray influenced far beyond the borders of France, the practical and theoretical proponents of the idea of preventing war.[10]

It is also the basic conception of the Indictment at Nurnberg.

Diplomacy and the science of international law found their way back into the old tracks after the first World War after a shock from which they recovered remarkably quickly. This to the horror of those who wanted to see the consequences—all the consequences—drawn from the catastrophe.

Mankind had a "grand vision of world peace" then, as Senator Bruce called it when the Pact of Paris was before the Senate for ratification.[11] I know how much the personality and the achievements of Woodrow Wilson are a subject of dispute.

But the more detachment we achieve, the clearer it becomes that he—by making happy use of his own preparatory work and that of others[12]—finally conceived and presented to the humanity of the time an entirely brilliant train of thought which is as right today as it was then and which can best be condensed as follows:

It is necessary to start afresh. The tragic chain of wars and mere armistices which are called peace must be broken.

For once humanity must have the insight and the will to pass from war to real peace—i.e. to peace which is good in its essence—on existing legal foundations, without regard to victory or defeat; and this peace which is good in its essence must be maintained—and maintained in good condition—by an organized union of States. These aims can only be achieved if the most frequent causes of war, namely excessive armaments, secret treaties and the consecration of the status quo as a result of the lack of insight of the current owner—a consecration which is harmful to vital needs—are eliminated.

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[10] Commentaire du Pacte de la Societe des Nations selon la politique et la jurisprudence des organes de la Societe. Paris 1930. (See especially p. 73 seq.) Further in the supplements for 1931-1935: ler Supplement au Commentaire du Pacte (1931) p. 13 seq.; 2e Suppl. (1932) p. 17 seq: 3e Suppl. (1933) p. 18, 39; 4e Suppl. (1935) p. 19, 99.

[11] Congress. Rec., Proceed. and Deb. of the 2nd Sess. of the 70th Congr. of the U.S. vol. LXX-Part. 2, p. 1333.

[12] See Baker, Ray Stannard, Woodrow Wilson and World Settlement. New York 1922 passim.

Humanity did not follow this path. And it is not to be wondered at that amongst those who fought against the instruments of Versailles, St. Germain, Trianon, Neuilly, and Sevres, be it in the camp of the vanquished or in that of the victors, were the very ones who strove after real, lasting peace. When the governments of the South African Union and Canada, in their replies to Secretary of State Hull's principles of enduring peace of the 16th July 1937, indicated in unusually strong words that an alteration of unjust, imposed treaties was an indispensable precondition for real world peace, they followed one of the fundamental views of the great American president.[13]

Humanity did not follow Wilson.

For the members of the League of Nations, too, war remained a means for settling disputes prohibited only in individual cases, but normal on the whole. So said Jean Ray as late as 1930.[14] The League of Nations did not prove to be a guide to the true order of Peace, indeed it did not even prove to be a sufficient brake on a complete backsliding into the old state. For, in fact, the world slid back entirely.

This is then the all-decisive fact in our problem of law.

Before the commencement of the second World War the whole system of collective security, even in the scanty beginnings it had made, had collapsed[15], and this collapse was acknowledged and declared expressly, or shown by unambiguous actions, by three world powers—and, in fact, declared with full justification:

> Great Britain expressly stated this at the beginning of the war to the League of Nations. I shall show this. The Soviet Union treated the German-Polish conflict simply according to the rules of classic international law concerning debellatio. I shall explain this. The United States declared their strict neutrality. I shall explain the import of this declaration.

The system of collective security has been much disputed over. In this question of the world's conscience, which is also of fundamental importance in this trial, it cannot be a matter of indifference that this system, rightly or wrongly, appeared in 1938 to such a prominent specialist on international law as the American, Edwin Borchard, as absolutely inimical to peace and as the child of the hysteria of our age;[16] and the collapse may have had various causes; it is certain that the above-mentioned three world powers testified at the beginning of September 1939 to the collapse—the complete collapse—and that they did not in fact do this as a consequence of the German-Polish war.

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[13] See KUHN, Arthur K., Observations of Foreign Governments upon Secretary Hull's Principles of Enduring Peace (A. J. vol. 32 (1938), p. 101-106/ App. II, Exhibit 51, p. 146 passages (5), (5a) (6). Also: WILSON, Woodrow, War and Peace. Presidential Messages, Addresses and Public Papers, 1917-1924 (ed by Ray Stannard Baker and William E. Dodd), New York 1927.

[14] Commentaire, page 74.

[15] Regarding the indisputable fact of the collapse and the responsibility of the Great Powers for this, see the bitter conclusions reached by FENWICK from the period shortly before the scond World War (International Law and Lawless Nations. A. J., vol. 33 (1939), p. 743-745) App. II, Exhibit 55, page 157 seq., particularly p. 159, passage (6).

1. On the 7 September 1939 the British Foreign Office told the Secretary-General of the League of Nations:[17]

The British Government had assumed the obligation on the 5 February 1930 to appear before the Permanent International Court of Justice at the Hague whenever an action is brought against Great Britain, i.e., also in the case of actions which other states might bring on account of conduct by which Great Britain had, in the opinion of the plaintiff, violated international law during a war. The British government had accepted this regulation because it had relied on the machinery of collective security created by the League of Nations Covenant and the Pact of Paris functioning: because, if it did function—and as England would of course not conduct any forbidden wars and her opponent would on the contrary be the aggressor—a collision between England and those states that were faithful to the security machinery could not possibly be caused by the actions of British seapower.[18] However the British government had been disappointed in what it relied on: Ever since the League Assembly of 1938, it had no longer been possible to doubt that the security machinery would not function: on the contrary, it had in fact collapsed completely: a number of members of the League had already declared their strict neutrality before the outbreak of war:

"The entire machinery intended to maintain peace has broken down."[19]

I shall still have to show how right the British government was in the conclusions it drew. It should not be forgotten that the British Premier, Neville Chamberlain, had already proclaimed on the 22 February 1938 in the House of Commons, i.e. before the so called Austrian Anschluss, the complete inefficiency of the system of collective security[20]:

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[16] Neutrality and Unneutrality (A.J., vol. 32, (1938) p. 778, seq/App. II, Exhibit 53, p. 151, passages (2) (3) (1), and p. 154 passage (15).

[17] See App. I, Exhibit 33, page 98, including the Memorandum on the Signature by His Majesty's Government in the United Kingdom of the Optional Clause of the Statute of the Permanent Court of International Justice (Cmd.3452.) Miscellaneous No. 12 (1929), an extract of which is given here as Exhibit 34 of App. I (page 102).

[18] App. I, Exhibit 33, page 98, passage (1) page 99, passages (2) and (3) and Exhibit 34, page 102 seq. It is the same train of thought developed by BRIERLY, Some Implications of the Pact of Paris (Br. YB 1929), App. II, Exhibit 44, page 126, passages (14), (15).

[19] "Tout le mecanisme prevu pour le maintien de la paix s' est disloque. App. I, Exhibit 33, page 99, passages (4) and page 100, passages (3) and (6).

"At the last election it was still possible to hope that the League might afford collective security. I believed it myself. I do not believe it now. I would say more: If I am right, as I am confident I am, in saying that the League as constituted today is unable to provide collective security for anybody, then I say we must not try to delude ourselves, and, still more, we must not try to delude small weak nations into thinking that they will be protected by the League against aggression and acting accordingly, when we know that nothing of the kind can be expected."

The Geneva League of Nations was "neutralized", as Noel Baker expressed it later in the House of Commons.[21]

2. In view of the correct conclusions drawn by the British government in their Note of 7 September 1939 to the League of Nations, it is no wonder if the Soviet Union treated the German-Polish conflict in accordance with the old rules of power politics. In the German-Russian Frontier and Friendship Pact of 28 September 1939[22] and in the declaration made on the same day[23] in common with the Reich government, the government of Moscow starts from the conception of the debellatio of Poland, i.e. the abolition of Poland's government and armed forces. There is no mention made of the Pact of Paris or the League of Nations Covenant. The Soviet Union notes the abolition of the Polish state machinery by means of war, and draws from this fact the conclusions which seem right to her, agreeing with the Reich government that the new order of things is exclusively a matter for the two powers.

It was therefore only logical when, in the Finnish conflict of the winter of 1939-1940, the Soviet Union took up its stand on classic international law. It disregarded the reactions of the League of Nations, when, without even considering the application of the machinery of sanctions and only appearing to apply an article of the Covenant which was intended quite differently, it resolved that the Soviet Union had, as an aggressor, excluded itself from the League[24]. The report of the Swiss Federal Council of the 30 January 1940 to the Federal Assembly[25] tries to save the face of the League which has been excluded from political realities.

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[20] App. I, Exhibit 29, page 91, passage (3).

[21] App. I, Exhibit 37, page 111, 21 Nov. 1939.

[22] App. I, Exhibit 35, page 108.

[23] App. I, Exhibit 36, page 110.

[24] Resolutions of the Assembly and the Council of 14 December 1939/ App. I, Exhibit 38, pages 112, 113.

[25] App. I, Exhibit 39, page 114.

3. The President of the United States stated on 5 September 1939 that there existed a state of war between several states with whom the United States lived in peace and friendship, namely Germany on the one hand and Great Britain, France, Poland, India and two of the British Dominions on the other hand. Everyone in the United States was bound to obey the neutrality regulations most strictly.

From the time of the preliminary negotiations, it was known in the United States that Europe, and particularly Great Britain and France, saw the main value of the pact outlawing war in the fact that the United States would take action in case of a breach of the pact. The British Foreign Minister stated this on 30 August 1928, i.e., four weeks previous to the signing of the pact. During the deliberations of the American Senate on the ratification of the pact, Senator Moses particularly drew attention to this[26]. Senator Borah affirmed at the time that it was completely impossible to imagine that the United States would calmly stand by.[27] After the discredited failures of the policy of collective security in the case of Manchuria and Abyssinia the world had understood the now famous "quarantine" speech of President Franklin Roosevelt of 5 October 1937 and the "Stop Hitler!" warnings of the same President before and after "Munich" as an announcement that the United States would act on the next occasion. The declaration of neutrality of 5 September 1939 could therefore only mean: Like Great Britain and the Soviet Union, the United States accepts as a fact the collapse of the system of collective security.

This declaration of neutrality has often been looked upon as the death blow for the system. The Washington government could reject such a reproach as unjustified. For the system had already been dead for years, in so far as one believes at all that it was ever actually alive. But many did not see the fact that it was not alive at the moment, until the blinding light of the American declaration of neutrality fell upon it.

On the 1 September 1939 a decision had already been reached long before about the various experiments which had been tried since the first World War to replace the "anarchic world order" of classic international law by a better, a real, order of peace; i.e. to create in the community of states a general statute according to which there would be wars which are forbidden by law and others which are not forbidden by law. These experiments had, in the opinion of the major powers of the time, collapsed.

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[26] App. I, Exhibit 13, page 53, passages (30) and (33). See also Ellery C. Shotwell, Responsibility of the United States in Regard to International Cooperation for the Prevention of Aggression (A.J. vol. 26, 1932, p. 113.)

[27] App. II, Exhibit 44, p. 127, passage (16). See also Brierly, J.L., Some Implications of the Pact of Paris (Br. YB 1929) He thinks that a violation of neutrality is impossible. (App. II, Exhibit 44, p. 127, passage (10) and (12). In 1936 the same thought was expressed by the Englishman McNair: Collective Security (Br.Y.B/App. II, Exhibit 49, page 143, passage (3).

The greatest military powers of the earth clashed in a struggle in which they used their full strength. For the proponents of the materialistic conception of history this was a second phase in a process developing according to inexorable laws, in which history ignored diplomatic and juridical formulas with supreme indifference.

For the majority of the international lawyers of the world did state: In the general international law at present valid there is no distinction between forbidden and not forbidden wars.

Hans Kelsen demonstrated this in 1942 in his paper "Law and Peace in International Relations" which he wrote after a careful research into the literature. In this he himself belongs to the minority who concede a legal distinction between justified and unjustified wars. His statement therefore carries all the more weight.

But now we must ask: Are we right in speaking of the collapse of the system of collective security at all? This presupposes that such a system at one time existed. Can this really be asserted? This is a question of the greatest importance for this trial, in which the existence of a world wide consciousness of right and wrong is taken as the basis for the indictment for breach of the peace.

There arises before us the tragedy of the Briand-Kellogg Pact, that tragedy from which we all suffered so much, we who rejoiced when the pact was concluded and later, after a first period of depression, greeted the Stimson Doctrine as a long overdue step absolutely essential for the achievement of real peace, and as an encouraging omen of fresh progress.

The United States had a great goal in view in 1927 and 1928, as I have already mentioned. In the League of Nations the problem had been tackled only half-heartedly and with half measures, and this had perhaps done more harm than good to the cause of real peace. The Geneva Protocol had gone on the rocks. Kellogg now wanted to get over all the difficulties which are actually essential parts of the problem, and jerk the world out of its deadlock by taking action without worrying much about theories. The published treaty with its two articles, the renunciation of war and the obligation of peaceful settlement, seemed to fulfill the longings of a humanity which wanted to see at last the act which would liberate it.

But the difficulties which it was desired to get over are partially inherent in the problem, and no regulations made by any legislator can ever eliminate them completely. For even if one disposed of unambiguous criterions, who among us fallible human beings would have the authority to give a decision in case of dispute? But we do not even possess unambiguous criterions of aggression and defense.[28] This holds both for the so-called political concept, which is in a way the natural one, and for the legal concept or concepts of aggression and defense.

But these were not the only difficulties pointed out explicitly and implicitly by the French Government in the preliminary negotiations for the pact, and this with the full right of one[29] who knows Europe and its very old historical legacy in the way the United States Government knows America and its quite different history. Even if somebody were capable of jumping over his own shadow, the shadow cast by European history is so much longer.

When the world got to know the notes exchanged during the preliminary negotiations, with all the definitions, interpretations, qualifications and reservations, it became manifest to what an extent the opinions of the governments differed from one another despite one and the same wording. One saw the Soviet Governments open—even bitter— criticism of the refusal of the Western Powers to disarm and thus create the essential precondition for an effective policy of peace, further of the vagueness of the treaty[30] but especially of the famous English reservation of a free hand in certain regions of the world, the reservation which has often been called the British Monroe Doctrine or the Chamberlain Doctrine[31], and one knew that in reality there existed only formal agreement behind the signatures and that no two powers understood exactly the same thing by the treaty. Only on one thing did complete agreement exist: War of self defense is permitted as an unalienable right of all states; without this right, sovereignty does not exist; and every state is alone judge of whether in a given case it is waging a war of self-defense.

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[28] See e.g. EAGLETON, Clyde, An Attempt to define Aggression (International Conciliation No. 264, 1930), CUTEN, A. La notion de guerre permise. Paris 1931. WRIGHT, Quincy, The Concept of Aggression in International Law (A. J. vol. 29, 1935, p. 395, seq.)

[29] Note of the United States Government to the Governments of Great Britain, Germany, Italy and Japan of the 13 April 1928; draft treaty of the 20 April 1928 drawn up by the French Government; Note of the British Secretary of State for Foreign Affairs of the 19 May 1928 to the American ambassador; Note of the 23 June 1928 from the US Government to all nine participants in the negotiations; Note of the British Secretary of State for Foreign Affairs of the 18 July 1928; Note of the Soviet Commissar for Foreign Affairs of the 31 August 1928/ App. I Exhibit 2, p. 5, passage (2), Exhibit 3, p. 7-9 in toto; Exhibit 5, p. 12, passage (2) and p. 13, passage (3); Exhibit 7, p. 16-18 in toto; Exhibit 8, p. 19 in toto; Exhibit 9, p. 20 seq. in toto.

[30] Letter of the People's Commissar for Foreign Affairs of the 31 August 1928/ App. I, Exhibit 9, P. 23, passage (7)

[31] Ibid p. 25, passage (10).

No state in this world was ready to accept foreign jurisdiction concerning the question of whether its decisions on ultimate questions of existence were justified or not.

Kellogg had declared to all the nine states participating in the negotiations, in his Note of the 25 June 1928[32]:

> "* * * The right of self-defense * * * is inherent in every sovereign state and is implicit in every treaty. Every nation * * * is alone competent to decide whether circumstances require recourse to war in self-defense."

The friends of peace were cruelly disappointed.

What was the use of such a treaty anyway?

They were only too right.

Very soon afterwards they heard with even greater grief of the course of the discussions in the American Senate. The ratification was, it is true, passed with 85 votes against one, with few abstensions, but, if behind the signatures of the contracting states there was no material agreement, there was even less behind the result of the vote in the Senate of the leading world power ideologically and as far as the initiative was concerned.

The discussions in the Senate, which remain memorable for all time because of their profound seriousness and loftiness showed —and several Senators expressly said so—that opinions of the Senators oscillated between two poles which were worlds apart.[33] For some the treaty really meant a turning-point[33]; to others it appeared worthless[33], or, at best, a feeble or friendly gesture[33] [34], a popular slogan[35], a sort of international kiss[36]; to still others a fertile soil for all the wars of the future[37], a gigantic piece of hypocrisy[38], even the legalization of [39] or of British world control[40], or the guaranteeing of the unjust status quo of Versailles for France and Great Britain[41]. Some senators criticized the complete vagueness of the stipulations of the treaty[42] even more sharply than the Russian Note. And if one took Kellogg's declaration about the right of self defense, which, according to the will of the signatory states, was an integral part of the treaty, literally: what kind of war was then forbidden at all?[43] Sarcastic and ironic words were used.

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[32] App. I, Exhibit 7, p. 16, passage (1) Add to this the opinions of the Senators at the debate on the ratification in the US Senate./ App. I, Exhibit 13, p. 46, passage (19), p. 47, pass. (22); p. 52, pass. (29); p. 57, pass. (45); and p. 59 pass. (50). See also KELLOGG, F. the War Prevention Policy of the United States (A.J. vol. 22, 1928, p. 261 seq.)

[33] App. I, Exhibit 13, p.39, passage (1) and p.47, passage (19a)

[34] ibid, p.42, passage (9).

[35] ibid, p.55, passage (36).

[36] ibid, p.41, passage (7).

[37] ibid, p.56, passage (39).

[38] ibid, p.59, passage (49).

[39] App. I, Exhibit 13, p.53, passages (31), (33).

Nothing was gained by this Paris Pact if everything were to remain as it stood at its conclusion. In the opinion of the great American expert on international law, Philip Marshall Brown, the pact unwittingly engendered by its ineptness the horrible monster of "undeclared war".[44]

Those who fought against Versailles, Germans and non-Germans, because progress was blocked, and those who criticized the League of Nations, Germans and non-Germans, because it did more harm than good to the will for progress, had all rejoiced for nothing at the end of August 1928. The decisive step had not been taken.

But above all the one thing that is not sufficient in itself but is indispensable if a guarantee of peace is really to be created, the one thing that—in the unanimous opinion of all who reckon with human beings as they really are—is necessary, was not tackled at all:

To create a procedure by which the community of states can, even against the will of the possessor, change conditions that have become intolerable, in order to provide life with the safety-valve it must have if it is to avoid an explosion.

Just as the state can, if at all, avoid revolutions only by good legislation and by adjusting the laws to the altered manner of life in good time, so it is with the community of states as well. Wilson also had this fundamental principle in mind as we saw. One of the great British experts on international law, one of the enthusiastic, unconditional and progressive adherents of the Paris Pact, McNair, took this into account too when, in 1936, he wanted to have placed beside collective force the collective and peaceful revision of conditions which had become dangerous[45]. This was taken into account by the American experts on international law, Borchard[46] and Fenwick,[47] in their warning explanations of the aspects of the situation connected with international law, shortly before the second World War. The Government of the German Reich had, by the way, pointed out this problem which overshadowed all others, in Stresemann's Note to the American Ambassador dated the 27 April 1928, when unconditionally agreeing to Kellogg's proposal[48].

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[40] ibid, p.41, passage (8); p.48, passage (23); p.(50), passage (26); p.(52), passage (28); p.57, passage (41), (43), (44); p.(58), passage (46). In addition, Borchard-Lage, Neutrality for the United States, 1937,/App. II, Exhibit 50, p.144.

[41] App. I, Exhibit 13, p.(44), passage (15) and p.57, passage (42).

[42] ibid. p.46, passage (18) and p.54, passage (35).

[43] ibid. p.39/40, passages (2), (3), (4), (5).

[44] International Lawlessness, A.J. vol.32 (1938) p. 775/ App. II, exhibit 52, p.148, passages (3), (4).

The problem of "collective revision" was not seriously tackled later on either. This is not surprising, if only because the very character of such an institution presupposes renunciation of their sovereignty by the states. And can such a renunciation be considered in the times we live in? Philip Brown melancholically thinks that this is less possible than ever[49]. And for this reason a real forward step in the question as to how war could literally be outlawed was not practicable.

The Government of the United States and the League of Nations did a great deal to satisfy the urgent demands of the nations in spite of these inextricable interdependences. They subsequently tried to give the pact a precise content and "teeth". The science of international law provided suggestions for this and checked it. We must also trace this process briefly even though it remained completely unsuccessful, because the seeds of the ideas contained in the Indictment are to be found here, insofar as its line of argument is not a political or ethical but a legal one.

First, in its ban on aggression, the Paris Pact unquestionably starts from the political concept of aggression; but in that it is quite indefinite. Shotwell and Brierly, among others, tried to help immediately by deducing a legal concept of aggression from the second Article of the Treaty, which Article establishes the obligation to follow a procedure of peaceful settlement.[50] We can leave open the question whether this interpretation may be applied to the treaty. In practice nothing is actually gained by doing so; one kind of difficulty is simply put in the place of another. There are no fewer obscurities. The measures of peaceful settlement presuppose good will on both sides; what, then, if it is lacking on the other side? And what is still a measure of peaceful settlement and what is one no longer? The Russian Government was quite right in the above-mentioned note of 31 August 1928 to the Kellogg-Briand Pact when it expounded this question.[51]

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[45] Collective Security (Br.YB,1936, p.150 seq).
App. II, exhibit 49, p.142, passage (2).

[46] Neutrality and Unneutrality (A.J.,vol.32,1938, p.778 seq.).
App. II, exhibit 53, p.151, seq., particularly p.152, passages (6), (7), (8), (9).

[47] International Law and Lawless Nations (A.J.,vol.33 1939, pp.743-745/
App. II, exhibit 55, p.159, passages (7) and (8).

[48] App. I, exhibit 4, p.10. See also Scelle, George Theorie juridique de la revision des traites. Paris, 1936; further: Kunz, Josef, The Problem of Revision in International Law ("peaceful change") A.J.,vol.33 1939, pp.33-35.

[49] International Lawlessness (A.J.,vol.32,1938,p.775) App. II, exhibit 52,p. 148, passage (1) and (2).

[50] Brierly, Some Implications of the Pact of Paris (Br.YB 1929, p.208 seq.) / App. I, exhibit 44, p.123, passage (3).

Then other attempts to help tried to develop a completely new world constitution from the entirely indefinite pact by means of logic. They are connected with the name of the American Secretary of State Stimson and with the work of the Budapest Meeting of the International Law Association in 1934.[52]

To understand this it is necessary to assume that the Kellogg Pact really brought about, in a legally definable manner, an unambiguous and unconditional renunciation of war. Then, of course, there no longer exists the right to wage wars as and when one likes. War waged against this prohibition is an offense against the constitution of the community of states. We are immediately faced by the question: Can the legal position of a State which attacks contrary to law be the same as that of a State which is attacked contrary to law?

If one answers: No, as does for instance the influential French commentator of the League of Nations Covenant, Juan Ray,[53] does this then not mean the elimination of the most important fundamental principles of classic international law?

1. Do the international laws of war—which after all assume the right to wage war freely and the duel-like character of war and, at any rate, the equality before the law of the belligerents—apply for the appreciation of the actions of the belligerent powers against one another?

2. Is it possible, or indeed permissible, that neutrality should still exist in such a war?

3. Can the result of the war, if the aggressor is victorious, be recognized by law, especially if it is put into the form of a treaty, or must not the community of States deprive the aggressor of the spoils of his victory by a policy of non-recognition? Should there be, or perhaps even must there be, common coercive action by the states against the aggressor?

It must be noted: Not even the theory of law has drawn all the conclusions. The practice of the states, after a few tentative beginnings in isolated points, did not finally carry things to a conclusion in a single case.

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[51] App. I, exhibit 9, p.24, passage (8).

[52] The well-known "Budapest Articles" in App. I, exhibit 23, pp.78/79.

[53] Commentaire, p.371.

With regard to the first point: The validity of the international laws of war during a war, whatever the latter's origin, has not as yet been seriously disputed by any state. Any doubts that arose were cleared up in a way which allowed of no misunderstandings. I draw attention to Resolution No. 3 of the League of Nations Assembly of the 4 October 1921 and to the report of the Committee of Eleven of the League of Nations for the adaptation of the Covenant to the Pact of Paris.[54] The aggressor state has the same rights and duties in a war as the attacked nation, i.e. those laid down by the traditional international laws of war. The French Chief Prosecutor appears to wish to deviate from this line, but not to wish to draw the full conclusions. But I do not see any tendency to deviate from the present path even in the most recent practice of states.

With regard to the second point: Attempts have been made to deny the obligations imposed by neutrality, and in fact finally to give the states not involved the right of non-neutrality and even the right to wage war against the aggressor. Some statesmen and scholars have devoted themselves just as passionately to undermining and even to denying the right to neutrality as other statesmen and scholars have spoken in favor of its undiminished continuance[55]. The clearer it became that the whole system of collective security did not function in the particular cases which were of decisive importance, namely in those cases where steps would have had to be taken against a great power, the more the idea of neutrality asserted itself with new strength. The complete discrediting of the League of Nations and of the system of the Briand-Kellogg Pact in the Abyssinian conflict put classic international law back in its old position again here too.

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[54] Of the 8 March 1930. App.I exhibit 17, page 64. See also Rutgers in the "Recueil des Cours" (Academie de Droit International) vol.38,p.47. Also: "Budapest Articles" 7 (App.I, exhibit 23, page 79). Also: Josef Kunz, Plus de loi de la guerre? (Revue Generale de Droit International Public, 1934). Cohn, Neo-Neutrality (1939) App.II, exhibit 54.

[55] The Peruvian delegate, CORNEJO, in the Committee of the Assembly of the League of Nations in 1929 (Assemblee 1929, C III J.O.,p.201): Neutrality no longer exists! Stimson: The Pact of Paris. Address, 8 August 1932 / App. I, exhibit 20, page 76, passage (3).
Hull. Declaration on the Neutrality Law of 17 January 1936 / App. I, exhibit 27, page 83.
Speech by the Swedish Foreign Minister Sandler of the 6 Dec. 1936/ App. I, exhibit 27, page 84 seq.
3 October 1939: Declaration of Panama; the exchange of Notes by the 21 American Republics with Great Britain, France and Germany (23.12.1939; 14.1., 23.1, 14.2.1940) is based completely on the classic Neutrality Law.
The Budapest Articles.
Literature: See in the index of authors and works—Appendix III—The works and papers by:
D'Astory, B. (1938), Baty, Th. (1939), Bonn, M.J. (1936/37). Borchard, E.M. (1936; 1937; 1938; 1941), Brierly, J.L. (1929; 1932), Brown, Ph.M. (1936; 1939), Buell (1936), Cohn (1939), Descamps, de (1930), Eagleton, Clyde (1937), Fenwick, Charles G. (1934; 1935; 1939), Fischer Williams, Sir John (1935; 1936); Garner, James Wilford (1936; 1938), Hambro, Edvard (1938); Hide, C.C. (1937; 1941), Jessup, P. C. (1932; 1935; 1936), Lauterpacht (1935, 1940), Mandelstam (1934), Miller, David Hunter (1928), McNair (1936), Politis, N. (1929; 1935), Rappard, W.E. (1935-1937), Schindler, D. (1938), Stimson, H. (1932), Stowell, Ellery C. (1932), Tenekides, C.C. (1939), Whitton, J.B.(1927,1932), Wright, Quincy (1940).

In 1935 Switzerland declared her unrestricted neutrality[56]; Belgium, Denmark, Finland, Luxemburg, Norway, Holland and Sweden followed with their Declaration at Copenhagen on 24 July 1938[57]. The failure of the League of Nations was the reason, this fact also being mentioned openly.

With reference to the third point: The following is the idea of the policy of non-recognition. The states not involved in a conflict should conduct themselves as members of the community of states, i.e. they should protect the constitution of the community of states by refusing to recognize the fruits of the victor's victory, should he have been the aggressor. The situation he has created by force should not even seem to become a legal situation. He will thus be deprived of what he has gained, and one of the main inducements to wage war will thereby be eliminated. Such a policy of non-recognition is undoubtedly not enough to guarantee a system of collective security by itself, but it is an indispensable part of such an order. There can be no dispute about this. The Brazilian representative Braga gained merit by proposing, at the 2nd League Assembly in 1921 such a policy to be followed by the members of the League of Nations under the name of a "universal juridical blockade" (blocus juridique universel)[58]. The Finnish representative Procope interpreted Article 10 of the Covenant in this sense in 1930 before the League Assembly.[59] The Notes of the American Secretary of State Stimson of 7 January 1932 to China and Japan made this idea echo throughout the world.[60] Their contents are commonly called the Stimson Doctrine. The League of Nations accepted the Doctrine as a resolution of the Assembly dated the 11 March 1932.[61] The idea was later the central point of the Pact of Rio de Janeiro of 10 October 1933[62] and of the Budapest Articles of 10 September 1934[63].

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[56] Reservations of the Swiss delegation (M.Motta) of 10.10. 1935/App. I, exhibit 25, p.81/82, especially the passages (3), (4), (5).

[57] App. I, exhibit 30, p.93.

[58] App. I, exhibit 10, p.35.

[59] App. I, exhibit 16, p.63.

[60] App. I, exhibit 18, p.65.

[61] App. I, exhibit 19, p.66.

[62] App. I, exhibit 22, p.76.

[63] App. I, exhibit 23, p.78.

The conflict between Italy and Abyssinia in 1935-1936 became the great test-case[64], which decided the fate of the system of collective security: The League of Nations declared a member which was a great power to be the aggressor and decreed economic sanctions, but then shrank from coercive military measures and finally, after Italy's victory, struggled painfully in debates on procedure, especially at the 18th Assembly of the League, to find an answer to the question as to how the League, without openly betraying its constitution, could cross the attacked member, the minor-power Abyssinia, off the list of existing states and recognize it as part of the Italian Empire. The United States also did not enforce the Stimson Doctrine, but remained strictly neutral [65] [66].

It is necessary to know all this; and also to know that the British Government on 20 February 1935 politely but firmly refused, through the Lord Chancellor, Viscount Sankey[67], to accept the logical deductions, and paid tribute to the old truth; it is not logic but history that creates law.[68] On a later occasion, when Secretary of State Cordell Hull had explained the principles of American policy to all the powers on the 16 July 1937,[69] the Portuguese government issued a warning against "the abstract and generalizing tendency of jurists"; it warned against attempts to "find a single formula" and against not studying historic facts sufficiently[70].

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[64] Jean Ray, 4th Supplement to the Commentary, 1935, p.10;
"A statesman said one day, speaking of article 16, that if it was applied, it would undoubtedly only be applied once. One can say the same thing about the whole machinery which is intended to be an obstacle against war."
See also Fischer Williams, Sir John, Sanctions under the Covenant (Br.YB 1936) and McNair, Arnold D., Collective Security (ibid.App. II, exhibit 48 and 49, p.134, passage (1) and p.140, passage (1).

[65] With reference to the Stimson Doctrine and the case of Abyssinia, see in the index of authors and works—Appendix III—the works and papers of Borchard (1933), Fischer Williams (1936), McNair (1933), Sharp (1934), Stimson (1932), Wild (1932), Wright (1932, 1933).

[66] With reference to the system of "collective security", see from the literature concerning the whole position in international law (App. III): Briefly (1932), Bourquin (1934), Brouckere (1934), Cuten (1931), Descamp (1930), Eagleton (1930, 1937, 1938), Elbe (1939), Fenwick (1932,1934, 1935,1939), Fischer Williams (1932, 1933, 1935, 1936), Giraud (1934), Garner (1936), Graham (1929, 1934), Hill (1932), Hyde (1941), Jessup (1935), Mandelstam (1934), Politis (1929), Ritgers 1931, Shotwell (1928), Wickersham (1928/1929), Whitton (1932), Wright (1942).

[67] Parl. Deb., H.L. 5th ser., vol.95, cols.1007, 1043, App. I, exhibit 24, page 80.

[68] Lauterpacht, The Pact of Paris and the Budapest Articles of Interpretation (Transactions of the Grotius Society, XX, 1935, p.178) draws the conclusion from the fact that States can accept or reject what was logically deducted to be legal in Budapest. Jessup asserts that the States did not accept the Budapest Articles (Neutrality, its History, Economics and Law, Vol.IV, Today and Tomorrow, 1936, App. II, exhibit 47, p.132, passages (1), (2).).

[69] See A.J. vol.31, 1937, p.680-693.

[70] See the concurring statements by Kuhn, Arthur K.: Observations of Foreign Governments upon Secretary Hull's Principles of Enduring Peace (A.J., vol.32, 1938, p.101, 106). App. III, exhibit 51, p.145, passages (3) and (4) and p.147, passage (8).

We therefore come to the conclusion that: In the practice of the relations between states there existed—at least during several years prior to 1939—no effective general ruling of international law regarding prohibited war.

No such general ruling existed so far as the leading statesmen and the peoples were aware. This is, in fact, the ultimate reason why the path of special rulings on international law was followed to an ever increasing extent: two states would then conclude treaties, in full knowledge of their particular historical conditions and with a view to securing peace between themselves.

Now, during the second World War the United States Government decided to help Great Britain. Great Britain was able to acquire destroyers and it later received the assistance of Lend-Lease. The American public recognized this act of assistance as being essentially no longer neutral; it was regretted by some, welcomed by others, now attacked and now defended. The supporters of the measures before the American public, above all Stimson and Cordell Hull, quite rightly did not attempt to justify them as consistent with neutrality. On the contrary, they took up their stand on the Pact of Paris as interpreted by the Budapest Articles[71]. As we saw, this would, according to Viscount Sankey's indisputably correct conception of what are the sources of international law, have been wrong even in 1935.

After the developments which had taken place since Italy's victory over Abyssinia, such discussions were entirely outside the field of legal realities. Their purpose was to resolve internal dissensions in America and they could therefore be of no direct importance for international law. Even had these discussions taken place between states, they could at most have helped to create law. But is it actually necessary to assert or prove that such discussions could not have created, during the great struggle, a law to attain which so many efforts—efforts which proved to be Utopian—were made in vain in peacetime? In this court many ways of legal thinking meet—ways which are in part very different. This leads to certain insoluble differences of opinion. But no way of legal thinking anywhere on earth, from the most ancient times to the most recent, could or can make possible arguments which contradict the very nature of law as a social order of human life arising out of history. If several governments accept articles, about the contents of which they are of different opinions, and if these articles then find no real application in the practice of these governments—which is not to be wondered at considering the circumstances under which they arose—and if theorists then interpret these articles and the practice of Governments rejects these interpretations either expressly or tacitly, one must then resign oneself to this, in so far as one wants to keep to the task of legal appreciation, no matter how much the goal may be worth striving for politically or morally.

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[71] See Wright in A.J., vol.34,1940, p.680 seq.
Particularly Stimson's speech of the 6.1.1941 should be mentioned here. (App. I, exhibit 41, p.115/116.)

But let us forget for a moment the bitter realities of those years following the Italo-Abyssinian conflict. Let us suppose for a moment that a general and unambiguous pact had existed, accepted and applied by the Contracting Parties in fundamental and factual agreement. Would the liability of individuals to punishment for the breach of such a treaty be laid down in international law? No, not even the liability of the State to punishment, let alone that of individuals.

The breach of such a treaty would not differ under the international law at present valid from any other violation of international law. The state which violates a treaty would commit an offense against international law, but not a punishable act[72]. Attempts were occasionally made to deduce from the word "delit" (offense), "crime international" (international crime) and "condemnation de la guerre" (condemnation of war) the existence of an International Criminal Law dealing with our case. Such conclusions are based on wrong premises[73]. Every lawyer knows that any unlawful behavior can be called a "delit" (delictum), not only punishable behavior. And the word "crime" is used even entirely outside the legal sphere. And this is precisely the case here! When, in 1927, on Poland's application, the League of Nations Assembly declared war to be an international crime, the Polish representative expressly stated that the declaration was not actually a legal instrument, but an act of moral and educational importance.[74]

The attempt to organize a universal world system of collective security on a legal basis failed. But this does not mean that the numerous bilateral treaties, whose purpose it is to preclude wars of aggression between the two partners, became inapplicable. One will actually have to examine whether the parties to the treaty may have made the existence or continued existence of a general machinery of collective security the prerequisite for the validity of the treaty.

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[72] Fischer Williams also stresses this in his "Sanctions under the Covenant" (Br.YB, 1936, p.130 seq. App. II, exhibit 48, particularly p.136). Also Kelsen: Collective and Individual Responsibility * * * (1943), p.531 App. II, exhibit 57, page 166, passage (5).

[73] Fischer Williams gives an only too justifiable warning against false ideas about the words "international crime" in his "Sanctions under the Covenant" (Br.YB, 1936, p.130 seq. App. II, exhibit 48, p.136, passage (3).

[74] Actes de l'Assemblee, 1927, P., p.153. Also Jean RAY, Commentaire, p.74-75.

The same applies to unilateral assurances of non-aggression as to the bilateral treaties.

Many bilateral non-aggression pacts were concluded, and several unilateral assurances were given. In some cases the political and in some a legal concept of aggression, and even a number of such legal concepts side by side, determine right and wrong. The German Reich also concluded a series of such pacts. They have been drawn upon by the prosecution as an argument. One must examine whether all these treaties were still in force at the critical moment. This examination must be left to the individual defense counsel. But if the German Reich did attack in an individual case in breach of a non-aggression pact which was still valid, it committed an offense in international law and is responsible therefor according to the rules of international law regarding offenses in international law. But only the Reich. Not the individual, even if he were the head of the state. This is beyond all doubt according to the international law at present valid.

It is unnecessary even to speak about this. For up to the most recent times not even the possibility has been mentioned, either in the Manchurian, or in the Italo-Abyssinian or in the Russo-Finnish conflict, of instituting criminal proceedings against those people who were responsible, on the Japanese, Italian or Russian side, for planning, preparing, launching and prosecuting the war, or who simply participated in these acts in any way. And it was certainly not because matters had, paradoxically enough, not been thought out to the end, that they were not prosecuted. But they were not prosecuted because this cannot happen as long as the sovereignty of states is the organizational basic principle of the whole inter-state order. One can have one or the other, but not both.[75]

Should things reach the point where, according to general world law, the men who participated in the planning, preparation, launching and prosecution of a war forbidden by international law could be brought before an international criminal court, the decisions regarding the state's ultimate problems of existence would be subject to super-state control. One could of course still call such states sovereign, but they would no longer be sovereign. In his paper of late 1943 which I have already mentioned several times and which he wrote after the Moscow conference of the 1

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[75] Fischer Williams, Sanctions under the Covenant (Br.YB, 1936) / App. II, exhibit 48, P.135 passage (2), is right.

November 1943, Kelsen again and again repeats the phrase that, in questions of breach of the peace, the liability of individuals to punishment does not exist according to the general international law at present valid and can not exist on account of sovereignty.[76]

For Europeans, at any rate, the state has for the last four centuries, above all since the ever more rapid advances made by the idea of the national state, gained the dignity of a superperson. Of course acts of state are acts of men. But they are in fact acts of state, i.e. acts of the state carried out by its organs and not the private acts of Mr. Smith or Mr. Robinson.

What the Indictment is doing when, in the name of the world community as a legal entity, it wants to have individuals legally sentenced for their decisions regarding war and peace, is, when one looks at it from the angle of European history, to look upon the state as one would look upon a private individual, indeed, more than that, what it is doing is to destroy the state mentally. Such a charge, the moral justification of which is not my concern, such a charge is—as we have already shown—incompatible with the very nature of sovereignty and with the feeling of the majority of Europeans. It seems, indeed, as though not only Europeans feel that way. In 1919, in Paris, it was the American delegates at the War Guilt Investigation Committee who opposed most strongly any legal sentence on the Kaiser for the very reason of the incompatibility of such a procedure with the sovereignty of the State.[77] And it is impossible to recognize the idea of sovereignty more strongly than Kellogg did eight years later during the negotiations in connection with the Pact of Paris, when he declared: Every state is the sole judge of its behavior with regard to questions affecting its existence.

There are epochs which idolize the sovereignty of the State, others anathematize it. Some idolize and anathematize it simultaneously. Our epoch does so. Perhaps we are living in a period of transition. Perhaps a transformation of values is taking place. Perhaps world community will become the supreme political treasure for the peoples, in place of their own particular States, which have at any rate held this position hitherto. Perhaps we shall reach a point where the unleashing of a war deserving moral and also legal condemnation will, for the general legal conscience, constitute high treason against the world community. Perhaps, we shall reach a point where it will be permissible, or even compulsory, to betray a government which starts such a war to foreign countries without a legal justification for calling this high treason towards one's country. At the moment in no nation is there a majority—let alone unanimity—in support of this opinion.

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[76] Collective and Individual Responsibility * * *, pp.534, 538, 539, 540, 542/ App.II, exhibit 57, p.167, passage (6); p. 168, passages (8) and (9); p.169, passages (10) and (11); p.170, passage (13) and p.173, passage (18).

[77] Scott, James Brown, emphasizes the great services which the American delegates did at that time to law (in House-Seymour: What Really Happened at Paris—New York 1921—App. II, exhibit 43, whole of page 122). Williams E.T., The conflict between Autocracy and Democracy (A.J., vol.32, 1938, page 663 seq.p.664.
Kelsen, Hans, Collective and Individual Responsibility * * * p.541/ App. II, exhibit 57, p.171, passage (15) and p.172, passage (17), See also Borchard, Edwin: Neutrality and Unneutrality (A.J., vol.32, 1938, p.778 seq.) App. II, exhibit 53, p.155, passage (17).

The punishment of individuals by the legal family of nations for breach of the peace between states can thus be ordered only if the fundamental principles of the international law currently valid and the scale of values which has for centuries been firmly rooted in the feeling of the European nations, are abandoned—that scale of values according to which the state, one's own sovereign state, forms the indispensable foundation for free personality.

The Indictment mentally wipes out the German state for the time when it stood upright in its full strength and acted through its organs. It must do so if it desires to prosecute individual persons for a breach of the peace between states. It must turn the defendants into private individuals. But it then combines them —so to speak on the private plane—with the help of the criminal law concept of a conspiracy which is taken from Anglo-Saxon law and is strange to us, gives them the many millions strong substructure of organization and groups which are designated as criminal, and thereby again places a superperson before us.

In as far as the Charter supports all this by its regulations, it lays down fundamentally new law, if—with the British chief prosecutor—one measures them against existing international law. That which, originating in Europe, has finally spread to the whole world and is called international law, is, in essence, a law of the coordination of sovereign states. If one measures the regulations of the Charter against this law, one must say: The regulations of the Charter negate the basis of this law, they anticipate the law of a world state. They are revolutionary. Perhaps in the hopes and longings of the nations the future is theirs. The lawyer, and only as such may I speak here, has only to establish that they are new—revolutionarily new. The laws regarding war and peace between states had no place for them—could not have any place for them. Thus they are criminal laws with retroactive force.

Now the French chief prosecutor—if I understand right—recognized the sovereignty of states in his humanly very moving speech and quite rightly saw that an unbridgeable gulf exists between the Charter and the international law at present valid, when it wants to see individuals punished as criminals for breach of international peace. He therefore shifts the trial from the plane of international law to that of constitutional law. It might possibly have happened that a German state power would have settled accounts after the war with those people who were responsible for launching the war. As the whole life of the German people is crippled today, those foreign powers who, in cooperation with each other on the basis of treaties, have territorial power in Germany, are undertaking this settlement of accounts.

The Charter has laid down the rules which are to guide the Court in its investigation and verdict. One can here leave unexamined whether this opinion is legally right or not. Even if it is right, our question is not altered thereby: When looking at the problem from this point of view, no less than from that of international law, we must know how far the Charter creates penal law with retroactive force. But we must now measure the regulations of the Charter not only against the international law which was valid for Germany and was transformed into national law—as people are wont to say—but also against the national criminal law which was binding on the defendants at the time of the deed. It is, after all, possible for a state, a member of the community of states, to be more cosmopolitan in its criminal law than the current international law. The rule of the Charter which is new with regard to existing international law may correspond to an already existing national law, and then it would not be a criminal law with retroactive force. So how was the breach of peace between states—particularly the breach of non-aggression pacts—treated in the national criminal law to which the defendants were subject at the time of the preparation and launching of the war?

It is possible that, in a state, those people are threatened with punishment who have prepared or launched or waged a war in breach of the international obligations of that state.[78] That would actually be completely unpractical. For the result of a war also decides the internal settling of accounts. No criminal court threatens a victorious government. But, in case of defeat, the defeat itself gives the measures of the settlement of account. In any case the regulations of the Charter regarding punishment for breach of the peace between states are new for the national criminal law which the defendants were subject to at the time of the deed. But if one does not understand the phrase "nullum crimen, nulla poena sine lege" as it is understood on the European continent, i.e., as meaning that law in the sense of "lex" is a rule laid down by the state, a state law, but is of the opinion which—as far as I can see—is peculiar to English legal thinkers, that law in the sense of "lex" can also be a deeply rooted rule of ethics, of morality, we have one question left: As things happened to be, did the defendants—former ministers, military leaders, directors of economy, heads of higher authorities—feel at the time of the deed, or could they have felt — that a behavior which is now made punishable by a retroactive law was against their duty?

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[78] KELSEN seems to think that no such state exists, (Collective and Individual Responsibility * * *, p.543/App.II, exhibit 57, p.173, passage (20).).

The answer to this question cannot be given unless one has an insight into the nature of the constitution of the German Reich at the moment of the deed.

The German Reich was incorporated into the community of states in that form, with that constitution, which it happened to have at any given moment. Such is the case with every member of the community of states. The United States and the British Empire, the Union of Soviet Socialist Republics and the French Republic, Brazil and Switzerland stand in the framework of the family of nations with that constitution which they happen to have at the time.

The prosecution has, with full justification, tried to give a picture of this concrete legal structure of the Reich. For, without trying to do this, no one in this trial will be able to arrive at a decision regarding right and wrong. In addition it seems to me that many ethical questions which have been raised here require such an attempt to be made. But I am afraid that, with the picture presented by the prosecution, it is not possible to arrive as close to the truth as is possible in spite of the complex nature of the subject.

The prosecution starts with the conception of a conspiracy to conquer the world on the part of a few dozen criminals. The German State, if one looks upon things in this way, becomes a mere shadow or tool. But this State had long been in existence; no one could set aside the enormous weight of its history. It was only various things in this history, at home and especially abroad, that made Hitler's rise to power at all possible or which made it easier for him, and it was many things in this history that guided, urged on, limited or put a brake on Hitler in his choice of aims and means, and helped to decide the success or failure of his measures and undertakings.

The prosecution was certainly right in laying great stress on the so-called Fuehrer principle. This so-called Fuehrer principle was, in fact, for the eyes and even more for the ears of the German people and of the world in general, the organizational guiding principle in the development of the Reich constitution after 1933.

It was certainly never unambiguous and it considerably changed its character during the course of the years. In the life of men, leading and commanding present inherent contradictions.

There exists one—may I say—soulless, mechanical way of governing mankind, which is to rule by issuing commands. And there is another one, which is to lead the way by setting an example and to be followed voluntarily, which is to lead or whatever one wishes to call it. This differentiation between two fundamentally different methods of governing men is often already made difficult by the words used; in the German languages for instance, this is so because leading is sometimes called unconscious ruling, and ruling is sometimes called leading. Furthermore, the differentiation is rendered more difficult by the fact that it is at one time leading and at another commanding that governs the relations between the same persons or by the fact that methods which are actually applicable to leading are used for ruling, and vice versa. Every State has been, is, and will be faced by the question of how it is to link up both these methods so that they complement, advance and keep a check on each other. Both methods appear continually and everywhere. There has never yet been a really great ruler who was not also a leader. But minor rulers are also subject to this law. And the Hitler regime brought about—at least to begin with—a synthesis of both methods which had at least the appearance of being tremendously efficient. To this synthesis has been attributed—perhaps not unjustly—much of what the world saw with wonder, sometimes approvingly but more often disapprovingly, as the result of an unheard of mobilization, concentration and increase in the energies of a nation.

This particular synthesis of leading and commanding found its strongest expression in the person of Hitler himself, in his actions of leading, for instance in his speeches, and in his commands. Hitler's acts of leading and commanding became the motive power of the German political life of that time. Justice must be done above all to this phenomenon. It is of absolutely decisive importance for judging the enormous mass of facts which has been produced here. With all the caution which is natural to men who think along scientific lines and which imposes on them an almost unconquerable mistrust of any attempt to comprehend and evaluate events which have happened so recently, one can perhaps risk this assertion: In the course of the years, Hitler gave commanding an increasingly favored place to the detriment of acts of leading, and finally brought it so much to the fore that commands and not the act of leading became the all decisive factor. Hitler the man of the people became more and more the dictator. The speeches in which he repeated himself ad nauseam even for his most willing followers and overshouted to the irritation even of members of his entourage who had faith in him, became rarer, but the legislative machine worked faster and faster. A later age will perhaps realize how far the great change in the attitude of the German people to Hitler, which was beginning even before the war, was the cause or effect of this change.

While, on the question of something superficial, i.e. the question as to how he wished to be designated, he pressed not to be called "Fuehrer and Reich Chancellor" any longer but only "Fuehrer", the way in which the state was being governed was following exactly the opposite path; leading disappeared more and more and there remained naked domination. The Fuehrer's orders became the central element of the German state edifice.

In the public hierarchy, this development brought with it rather an increase than a decrease in Hitler's power. The great majority of German officials and officers had seen nothing behind the organized leadership but a machinery of domination with a new label and, if possible, of an even more bureaucratic nature, side by side with the inherited state machinery. When Hitler's orders became the Alpha and Omega, they felt themselves, so to speak, back in the old familiar path. The queer and puzzling part had gone. They were back in their world of subordination. But anyway this development had given the Fuehrer's orders a special aura of sanctity for them too; there was no contradicting the Fuehrer's orders. One could perhaps raise objections but if the Fuehrer stuck to his order, the matter was decided. His orders were something quite different from the orders of any official of the hierarchy under him.

Here we have come to the fundamental question in this trial: What position did Hitler's orders occupy in the German constitution? Did they belong to the type of orders which were set aside by the Charter of this Court as grounds for the exclusion of punishment?

It was perhaps harder for a lawyer who grew up in the habits of the so-called constitutional state ("Reichtsstaat") than for other people to witness the slow and then ever more rapid disintegration of the guarantees of liberty provided by the constitutional state; for he never came to feel at home in the new order and always stood half outside it. But, for this very reason, he probably knows more than anyone else about the peculiarities of this new order. An attempt must be made to make it comprehensible. State orders, whether they lay down rules or decide individual cases, can always be measured against the existing written and unwritten law, but also against the rules of international law, morals and religion. Someone, even if only the conscience of the person giving the orders, always asks: Has the person giving the orders ordered something which he had no right to order? Or: has he formed and published his order by an inadmissible procedure? But an unavoidable problem for all domination lies only in this: Should or can it grant the members of its hierarchy, its officials and officers, the right—or even impose on them the duty—to examine at any time any order which demands obedience from them, to determine whether it is lawful, and to decide accordingly whether to obey or refuse?

No domination which has appeared in history to date has given an affirmative answer to this question. Only certain members of the hierarchy were ever granted this right; and they were not granted it without limits. This was also the case, for instance, under the extremely democratic constitution of the German Reich during the Weimar Republic and is so today under the occupation rule of the four great powers over Germany.

In as far as such a right of examination is not granted to members of the hierarchy, the order has legal force for them.

All constitutional law, that of modern states as well, knows acts of state which must be respected by the authorities even when they are defective. Certain acts of laying down rules, certain decisions on individual cases which have received legal force, are valid even when the person giving the order has exceeded his competence or has made a mistake in form.

If only because the process of going back to a still higher order must finally come to an end, orders must exist under every government that are binding on the members of the hierarchy under all circumstances and are therefore law where the officials are concerned, even if outsiders may see that they are defective as regards content or form, if measured against the previous laws of the state concerned or against rules imposed from outside the state.

For instance, in direct democracies, an order given as the result of a plebiscite of the nation is a fully valid rule or an absolutely binding decree. Rousseau knew how much the "volonte de tous" can be in contradiction to what is right, but he did not fail to appreciate that the orders of this "volonte de tous" are binding.

In indirect democracies the resolutions of a congress, of a national assembly or of a parliament may have the same force.

In the partly direct, partly indirect democracy of the Weimar Constitution of the German Reich, the laws resolved by a majority of the Reichstag large enough to alter the constitution and proclaimed by the president were under all circumstances law for all functionaries, including the independent courts of law, even if the legislator— knowingly or unknowingly—might have violated rules not imposed by the state but by churches or by the community of states. In the latter case the Reich would have been guilty of an international offense. For it would not have seen to it that its legislation was in accordance with international law.

It would, therefore, have been responsible in accordance with the international regulations regarding reparation for international offenses. But until the law concerned had been eliminated in accordance with the rules of German constitutional law, all officials of the hierarchy would have had to obey it.

No functionary would have had the right, let alone the duty, to examine its legal binding force with the aim of obeying or refusing to obey it, depending on the result of this examination. This is not different in any other state in the world. It never was and never can be different. Every single state has had the experience of its ultimate orders, its highest orders, which must be binding on the hierarchy if the authority of the state is to exist at all, being on occasion in conflict with rules not imposed by the state to divine law, to natural law and to the laws of reason. Good governments take trouble to avoid such conflicts. To the great sorrow—indeed to the despair—of many Germans, Hitler frequently brought about such conflicts—and serious conflicts too. And, if only for this reason, his way of governing was not a good one, even though it was for some years successful in some spheres. Only it must here be asserted straight away: These conflicts never affected the entire nation or the entire hierarchy—at least not immediately—but always merely groups of the nation or individual offices of the hierarchy; and it was only some of the people concerned who were fundamentally affected, many being only superficially involved; not to mention those conflicts that remained unknown to the overwhelming majority of the people and of the hierarchy, nor, therefore, those orders by which Hitler not only showed himself to be inhuman in individual cases, but simply outside the pale of what is human. It is a purely academic question: Would Hitler's power have taken such deep root, or would it have maintained itself if these inhumanities had become known to larger sections of the people and of the hierarchy? They just did not.

Now in a state in which the entire power to make final decisions is concentrated in the hands of a single individual, the orders of this one man are absolutely binding on the members of the hierarchy. This individual is their sovereign, their legibus solutus, as was first formulated—as far as I can see—by French political science with as much logic as eloquence. After all, the world is not faced by such a phenomenon for the first time. In former times it may even have seemed to be normal. In the modern world, a world of constitutions based on the separation of powers under the supervision of the people, absolute monocracy does not seem to be right in principle. And even if this is not yet the case today, one day the world will know that the vast majority of thinking Germans did not think any differently on this matter from the majority of thinking people of other nations of Europe and outside it.

Such absolutely monocratic constitutions can nevertheless come about as the result of events which no individual can grasp in their entirety and even less control at will. This is what happened in Germany from the beginning of 1933 onwards. This is what happened gradually, stage by stage to the parliamentary Weimar Republic, which under Hindenburg was changed into a presidential republic, in a process which partly furthered the development by acts of state which stressed legal forms and which can be read in state documents, but partly simply formed the rules by accepted custom. The Reich law of the 24 March 1933, by which the institution of Reich government laws was created and thus the separation of powers in the sense in which it had been customary was, in practice, eliminated, was, according to the transcript of the Reichstag session, brought about with a majority sufficient for altering the constitution. Doubts about the legality of the law have nevertheless been raised on the grounds that a section of the elected deputies had been kept away from the session by the police and another section of the deputies who were present had been intimidated so that only an apparent majority sufficient for altering the constitution had passed the law. It has even been said that no Reichstag, not even if everybody had been present and all of them had voted, could have abolished the fundamental constitutional principle of the separation of powers, as no constitution could legalize its own suicide. We need not go into this: the institution of government laws became so firmly rooted as a result of undisputed practice that only a formal jurisprudence that is entirely cut off from realities could attempt to play articles of law off against the realities of life and to ignore the constitutional change which had taken place. And for the same reason one's arguments are misguided if one ignores how the institution of government laws, i.e., of cabinet laws, was later changed by custom into one of several forms in which the Fuehrer legislated. At the base of every state order, as of any order whatsoever, there lie habit and custom. From the time when Hitler became head of the state, practice quickly led to Hitler standing both before the hierarchy and before the whole people as the undisputed and undisputable possessor of all competence. The result of the development was at any rate that Hitler became the supreme legislator as well as the supreme author of individual orders. It was not least of all under the impression of the surprising successes, or what were considered successes in Germany and abroad, above all during the course of this war, that he became this. Perhaps the German people is—even though with great differences between North and South, West and East—particularly easily subjected to actual power, particularly easily led by orders, particularly used to the idea of a superior. Thus the whole process may have been made easier. Finally the only thing that was not quite clear was Hitler's relationship to the judiciary. for, even in Hitler-Germany, it was not possible to kill the idea that it was essential to allow justice to be exercised by independent courts, at least in matters which concern the wide masses in their everyday life. Up to the highest group of party officials—this has been shown by some of the speeches by the then Reich Justice Leader, the defendant Dr. Frank, presented here—there was resistance, which was actually not very successful, when justice in civil and ordinary criminal cases was also to be forced into the "sic volo sic jubeo" of the one man. But: apart from the judiciary, which was actually also tottering, absolute monocracy was complete. The Reichstag's pompous declaration about Hitler's legal position, dated the 26 April 1942[79] was actually only the statement of what had become practice long before.

The Fuehrer's orders were law already a considerable time before this second World War.

In this state order of his, the German Reich was treated as a partner by the other states, and this in the whole field of politics. In this connection I do not wish to stress the way (so impressive to the German people and so fatal to all opposition) in which this took place in 1936 at the Olympic Games, a show which Hitler could not order the delegations of foreign nations to attend, as he ordered Germans to the Nurnberg party rally in the case of his state shows. I should like rather only to point out that the governments of the greatest nations in the world considered the word of this "almighty" man the final decision, incontestably valid for every German and based their decisions on major questions on the fact that Hitler's order was incontestably valid. To mention only the most striking cases, this fact was relied upon when the British Prime Minister, Neville Chamberlain, after the Munich conference, displayed the famous peace paper when he landed at Croydon. This fact was adhered to when people went to war against the Reich as the barbarous despotism of this one man.

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[79] Cf. Text in App. I under C (Exhibit 42).

No political system has yet pleased all people who live under it or who feel its effects abroad. The German political system in the Hitler era displeased a particularly large and ever increasing number of people at home and abroad. But that does not in any way alter the fact that it existed, not lastly because of the recognition from abroad and because of its effectiveness, which caused a British Prime Minister to make the now world-famous statement at a critical period, that democracies need two years longer than the totalitarian governments to attain a certain goal. Only one who has lived as if expelled from among his own people, amid blindly believing masses who idolized this man as infallible, knows how firmly Hitler's power was anchored in the anonymous and innumerable following who believed him capable only of doing what was good and right. They did not know him personally, he was for them what propaganda made of him, but this he was so uncompromisingly that everybody who saw him from close to and saw otherwise, know clearly that resistance was absolutely useless and, in the eyes of other people, was not even martyrdom.

Would it therefore not be a self-contradictory proceeding if both the following assertions were to be realized at the same time in the rules of this trial?

1. The Reich was the despotism of this one man, and for this very reason a danger to the world.

2. Every functionary had the right—in fact the duty—to examine the orders of this man and to obey or not obey them according to the result of this examination.

The functionaries had neither the right nor the duty to examine the orders of the monocrat to determine their legality. For them these orders could not be illegal at all, with one exception which will be discussed later—an exception which, if carefully examined, is seen to be only an apparent one—namely with the exception of those cases in which the monocrat placed himself—according to the indisputable values of our times—outside every human order, and in which a real question of right or wrong was not put at all and thus a real examination was not demanded.

Hitler's will was the ultimate authority for their considerations on what to do and what not to do. The Fuehrer's order cut off every discussion. Therefore: A person who, as a functionary of the hierarchy refers to an order of the Fuehrer's, is not trying to provide a ground for being exempted from punishment for an illegal action, but he denies the assertion that his conduct is illegal; for the order which he complied with was legally unassailable.

Only a person who has understood this can have a conception of the difficult inner struggles which so many German officials had to fight out in these years in face of many a decree or resolution of Hitler's. For them such cases were not a question of a conflict between right and wrong: disputes about legality sank into insignificance. For them the problem was one of legitimacy. As time went on, human and divine law opposed each other ever more strongly and more frequently.

Therefore, whatever the Charter understands by the orders which it sets aside as a ground for exemption from punishment, can the Fuehrer's order be meant by this? Can it come within the meaning of this rule? Must one not accept this order for what it was according to the interior German constitution as it had developed, a constitution which had been explicitly or implicitly recognized by the community of states? Many Germans did not like Hitler's position of power from the very beginning, and to many Germans who welcomed it at first because they yearned for clear and quick decisions, it later became a horror. But that does not in any way alter the following fact: must not those people who did their duty in this hierarchy; willingly or unwillingly, in accordance with this constitution, feel that an injustice was being done to them if they were sentenced because of a deed or an omission which was ordered by the Fuehrer?

A community of states could refuse to accept or tolerate as members such states as have a despotic constitution. But up to now this has not been the case. If it is to be different in the future, the non-despotic powers must take the necessary steps to prevent any member of the family of states turning into a despotic power and to prevent any despotic power entering the family circle from outside. Today people are realizing more and more clearly that this is the crux of our question. The circumstances must be very special if a modern people lets itself be governed despotically, even if it is as well disciplined as the German people. But as soon as such circumstances do exist, there are no internal counter-measures left. Then only the outside world can help. But if, instead of this, the outside world recognizes this constitution, it is impossible to see where successful internal resistance can come from. In pointing to these special circumstances and to the recognition by the outside world, we draw attention to facts, for the existence of which no German was, in our case, responsible, but which cannot be ignored when one asks how all this was possible.

But certain further facts must also be drawn attention to, without a knowledge of which one cannot fully grasp the fact that Hitler's absolute monocracy was able to get such a terribly firm hold. Hitler combined in his person all the powers of issuing legislative and administrative orders on the highest level, orders which could not be questioned and were absolutely valid; but immediately below him the power of the state was divided up into a vast mass of spheres of competence. But the dividing lines between these spheres were not always sharply drawn. In the modern state, particularly in the major states of a technical era, this cannot be avoided. But the tendency to exaggerate questions of competence is certainly no less marked in Germany than in any other country. This facilitated the erection of dividing lines between the departments. Every department watched jealously to see that no other one trespassed into its field. It everywhere suspected tendencies of other departments to expand; considering the great mass of tasks which the so-called "totalitarian" state had heaped upon itself, cases where two or three departments were competent for the same matter could not be avoided. Conflicts between departments were inevitable. If a conspiracy existed, as the Indictment assumes, the conspirators were remarkably incompetent organizers. Instead of cooperating and going through thick and thin together, they fought each other. Instead of a conspiracy we rather have a discordance.

The history of the jealousy and mistrust between the powerful persons under Hitler has still to be written. And let us now remember that in the relations between all departments, and within each department, people surrounded themselves with ever increasing secrecy; between departments and within the departments, between ranks and within the various ranks, more and more matters were classed as "secret". Never before has there been so much "public life", i.e, non-private life, in Germany as under Hitler; but also never before was public life so screened from the people, above all from the individual members of the hierarchy themselves, as under Hitler.

The one supreme will became, quite simply, technically indispensable. It became the mechanical connecting link for the whole. A functionary who met with objections or even resistance to one of his orders from other functionaries only needed to refer to an order of the Fuehrer's to get his way. For this reason many, very many, among those Germans who felt Hitler's regime to be intolerable, who indeed hated him like the devil, looked ahead only with the greatest anxiety to the time when this man would disappear from the scene: for what would happen when this connecting link disappeared? It was a vicious circle.

I repeat: An order of the Fuehrer's was binding—and indeed legally binding—on the person to whom it was given, even if the directive was contrary to international law or to other traditional values. But was there really no dividing line? During the first period at any rate—i.e. just as the time when the foundations of power were being laid, at the time when the monocratic constitution was being developed step by step—Hitler's followers amongst the people saw in their Fuehrer a man close to the people, a selfless, almost superhumanly intuitive and clear thinking pilot, believed only the best of him and only had one worry; whether he was also choosing the right men as his assistant and whether he was always aware of what they were doing. The tremendous power, the unlimited authority, were given to this Hitler. As in every state it also included harsh orders. But it was never intended as authority to be inhuman. Here lies the dividing line. But this line has at no time and nowhere been quite clearly drawn. Today the German people are completely disrupted in their opinions, feelings and intentions; but they are probably in agreement on one thing, with very few exceptions: they would not wish to draw this line with less severity as accusers than other peoples do towards their leaders. Beyond that line, Hitler's order constituted no legal justification. But it must not be forgotten that this line is not only vague by nature, but follows a different course in peace to what it does in wartime, when so many values are changed, and when men of all nations, especially in our days, take pride in deeds which would horrify them at any other time. And the decision to wage war does not in itself overstep that line, in spite of its tremendous consequences. Not in any nation in the world.

Hitler himself, at any rate, did not recognize this dividing line of inhumanity, of non-humanity, as a limit of obedience in his relations with his subordinates, and here also opposition would have been considered a crime punishable by death in the eyes and for the decisions of this man with limitless power who controlled an irresistible machine. What should a man who received an order overstepping this line, have done? A terrible situation! The reply of Greek tragedy, the reply of Antigone in such a conflict, cannot be imposed. It would be Utopian to expect it, or even demand it, as a mass phenomenon.

Before we come to the special question of who in the Reich possessed the power of deciding about war and peace, a further word remains to be said about the forms which Hitler's orders assumed.

Hitler's orders are solely the decisions of this one man, whether they were given orally or in writing, and in the latter case, whether they were clothed in more or less ceremony.

There are some orders by Hitler which can be recognized as such immediately. They are called "Erlass" (Decree) like the Decree concerning the setting up of the Protectorate of Bohemia and Moravia of 16 March 1939, or "Verordnung" (order), like the order for the execution of the Four-Year Plan of 19 October 1936, or "Weisung" (Directive), like the strategic decisions, so often cited during this trial, or simply "Deschluss" (Decision) or "Anordnung" (Instruction); often they are signed in Hitler's name only; sometimes we find the signatures of one or more of the high or highest civil or military functionaries as well. But it would be fundamentally wrong to assume that this was a case of counter-signatures as they are understood in the modern democratic constitutional law of nations ruled constitutionally or by a parliament—of a counter-signature which makes the signatory responsible to a parliament or to a State Court of Law. Hitler's orders were his own orders and only his own orders. He was much too fanatical a champion of the one-doctrine, i.e. of the principle that every decision must be made by one-and-only-one-man, to consider anything else even possible, above all things in the case of his own decisions. We will leave his high opinion of himself entirely aside in this connection. Whatever the more or less decorative significance of such counter-signing may have been, there was never any doubt that the Fuehrer's orders represented only his own decision and no one else's.

Special attention must here be drawn to those laws which appeared as Reich Cabinet laws or Reichstag laws. Hitler's signing of a law of the Reich Cabinet represented the formal certification of a Cabinet decision. In actual fact, however, a stage was reached where the Reich Cabinet laws were also solely decisions by Hitler who had previously given some of his ministers the opportunity to state the opinion of their departments. And when Hitler signed a law which, according to its preamble, had been decreed by the Reichstag, this was again only a case of a formal certification. In reality, however, it was a decision by Hitler.

From November 1933 onwards at the latest, the German Reichstag was not a parliament but an assembly for the acclamation of Hitler's declarations or decisions. These scenes of legislation appeared to many people at home and abroad almost to be an attempt to make democratic forms of legislation ridiculous by caricaturing them; nobody—either at home or abroad—regarded them as proceedings during which an assembly of several hundred men arrived at a decision after consideration, speeches and counter-speeches.

There are, however, also orders by Hitler which are not signed by him, but which can immediately be recognized as his orders. They are drawn up by a Reich Minister or some other high functionary, who states in the introduction "The Fuehrer has ordered", "The Fuehrer has decreed". We have before us not an order by the signatory, but a report by the signatory on an order given orally by Hitler. The orders by Hitler as Supreme Commander-in-Chief of the Armed Forces were thus often clothed in the form of such a report.

Finally, there are orders by Hitler which can only be recognized as such by a member of the public if he possesses knowledge of the constitutional position. When the Supreme Command of the Armed Forces (the OKW) issues an order, it is always an order by Hitler. Hitler himself, together with his working staff, was the OKW. The power to issue OKW orders rested solely with Hitler.

By my explanations regarding the constitution of the Hitler Reich, I have already—so to speak by implication—dealt with the question as to who was responsible for the ultimate decisions—for this state's decisions regarding questions of existence, especially for the decision about war and peace * * *.

Kelsen said—in his great treatise of the year 1943, which I have already mentioned above[80],—"probably the Fuehrer alone". We must say: Quite definitely alone.

Under the Weimar Constitution, the sole body responsible was the Reich legislature. Article 45 demands a Reich law for a declaration of war and for the conclusion of peace. And a Reich law could be passed only by the Reichstag or by a vote of the German people. Neither the Reich President, i.e., the Head of the State, nor the Reich Cabinet had the power. They might, at most, have created such circumstances by acts lying within their jurisdiction—possibly the Reich President as Commander-in-Chief of the Armed Forces—as to give the Reich legislature no option in its decision; a problem which, as is well known, has become a real one in the United States with regard to the relationship of the President to Congress and has, therefore, been seriously discussed, while it was not a real one for the Germany of the Weimar Constitution. If, however, the Reich legislature had, by means of a law, taken the decision to wage war, the Reich President and the whole State hierarchy, particularly the Armed Forces, would have been bound by this decision with no right of examination, let alone of objection, even if all the experts on international law in the world had regarded the law as contrary to international law. The Weimar Democracy could have tolerated as little as any other nation a state of affairs in which military leaders as such could examine the decision to wage war taken by the political leaders, in the sense that they could refuse obedience if they thought fit. The military means of power must be at the disposal of the political leaders of a state. Otherwise they are not means of power at all. This has always been so. And it will have to be so all the more if the duty to give assistance against aggression is really to apply amongst the nations.

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[80] Kelsen, Collective and Individual Responsibility, p. 546, App. III, exhibit 57, passage (24) and (25).

I have already shown how, in the course of a step by step transformation which laid particular emphasis on legal forms, Hitler replaced all the highest authorities of the Weimar period, and combined all the highest competences in his own person. His orders were law.

The circumstances in a state may be such that the man who is legally solely competent for the decision about war and peace, has, in practice, no—or not the sole—authority. If, however, both the sole legal competence and the sole authority in actual practice have ever been coincidental in any state, such was the case in Hitler Germany. And if, in any question, Hitler ever even accepted the advice of a third party such was not the case in the question of war or peace. He was the arbiter of war and peace between the Reich and other nations.

He alone.

In conclusion: Sentences against individuals for breach of the peace between States would be something completely new legally—something revolutionarily new. It makes no difference whether we view the matter from the point of view of the British or the French Chief Prosecutors.

Sentences against individuals for breach of the peace between states presupposes other laws than those in force when the actions laid before this Tribunal took place.

The Legal QUESTION OF GUILT—and I am here only concerned with that—IS THUS POSED IN ITS FULL COMPLEXITY. For not one of the defendants could have held even one of the two views of the legal world constitution on which the Chief Prosecutors base their arguments.

III. HERMANN WILHELM GOERING

1. FINAL ARGUMENT by Dr. Otto Stahmer, Defense Counsel

May it please the Tribunal!

This Trial—which is of a historical and political importance, and a significance in shaping new laws, and which is of dimensions such as have not been known hitherto in the history of law—these proceedings which concern not only the defendants present in the court, but which are of the greatest importance to the German people are now passing into a new phase.

As is stated in Article 24*h* of the Charter, the defense has the floor.

The position of the defense in these proceedings is especially difficult; for there is an all too unequal distribution of strength between the prosecution and the defense.

Months before the start of the trial the prosecution with the aid of a huge staff of experienced coworkers was able to explore all the offices and archives in and outside Germany and to examine witnesses in all territories, so it was in a position to submit to the Tribunal a tremendous amount of documentary material.

The difficult position of the defense is further aggravated by the fact that in the Anglo-American procedure on which this trial is based there is a clause missing which is contained in the German criminal procedure according to which the prosecution is also bound to procure and submit evidence exonerating the accused.

[The President of the Tribunal, at this point, refuted the preceding statement and reminded Dr. Stahmer that almost all documents presented by the defense in this case had been procured by the prosecution.—Ed]

After reading of the Indictment, Reichmarshal Goering in reply to the question of the presiding judge as to whether he pleaded guilty or not guilty, declared: "Not guilty in the sense of the indictment."

This statement of the accused necessitates an examination of all the charges made by the prosecution.

The accused has of course already dealt with many questions, which are of considerable importance for his defense, during his personal examination. He expressed his opinion in detail with regard to political and military happenings and exhaustively described the motives for his actions, and the origin and course of events.

I am thankful to the high Tribunal for permitting the accused to portray matters in all their breadth, as he saw, felt, and experienced them for this, and only this direct personal portrayal can afford good insight into the personal attitude of the accused and make it possible to give a reliable opinion of his personality. This knowledge is absolutely necessary if the Tribunal is to come to a decision, which is not only in harmony with objective law but which also renders the maximum of justice to the individuality of the perpetrator.

I do not consider it necessary, after the accused was heard so exhaustively on all particulars, to deal with every question to which he has already given the requisite explanation. In view of this I shall limit the defense to the following statements:

Preliminary History

We are in a transitory period of history of the greatest significance. An age is coming to an end which has been less known for its concept of order than for its concept of liberty. This striving for liberty released tremendous forces—so gigantic that in the end it was impossible to master them. The tremendous progress this era has unquestionably brought about in scientific and technical spheres we have dearly paid for with the shattering of all human order and the loss of peace in the entire world. So far the profound reasons for such a disastrous development have hardly been discussed in this court. But in order to rightly understand the grave crimes and confusion which are indicted here it is imperative to throw some light on the historical background.

The French chief prosecutor has already pointed out that the roots of National Socialism are to be found in a period far removed from us. He goes back even right to the beginning of the last century. He sees the first step to a leading astray of the German character in Fichtes "Reden an die deutsche Nation".

"Fichte preached the doctrine of Pan-Germanism" he says, insofar as he wanted to see the world planned and organized by others, just as he himself saw it and would have liked it to be shaped. I cannot understand how this should express more than the universal human desire to take part in the shaping of a common destiny. Only the methods of such attempts to participate may at times be justly criticized. A Swiss assertion, which also perceives in Fichte the cause of Germany's going astray, seems to me to be clarifying in this respect. It does not, however, accuse him of Pan-Germanism, that is, of the will to subjugate foreign peoples, but rather reproaches him for having attempted at all to unite the Germans into one nation. It contends that this was an inadmissible attempt to imitate the French and British, whereas it would have been more suited to the German character to remain a nation made up of different peoples. For only as such could it have continued its historical mission to remain the nucleus of a European federation.

Judging by Fichte alone the development is therefore not so easily interpreted.

If one wishes to think historically, one cannot look back and consider Fichte alone. For his "Reden an die deutsche Nation" was only an answer to the "Ruf an Alle" which the French revolution had sent out into the world, and they were directly provoked by the appearance of Napoleon. One must go back over the chain of causes and effects to their very beginning. This, the beginning of a national and personal striving for liberty which has characterized the whole of modern times, we find in the Middle Ages.

The colorful play of national and imperial tendencies and struggles which have typified ancient times was overcome by the conception of one eternal omnipotent Christian church. With this a state order superseded the dynamic forces of the time, an order which according to the doctrine of the church was created by the Lord himself and was therefore "full of God's grace" (von Gottes Gnaden). It strove to enfold universally all of humanity and to lead to peace and rest in God. It was the teachers of the church in the Middle Ages who first ventured to subject war to the principles of law. Prior to that it was taken as a matter of course or a natural phenomenon like sickness or bad weather and was often looked upon as a judgment of God. Men like St. Augustine and Thomas Aquinas opposed this conception and declared that one must differentiate between a just and an unjust war. They did this upon the basis and within the framework of a Christian belief, by which God had entrusted mankind with the fulfillment of a moral world order to bind one and all and which would provide the answer to the question of the righteousness or unrighteousness of a war.

When with the Renaissance and the Reformation the spiritual basis of the medieval order was shaken, this development into a universal world peace took on the opposite character. Life, formerly inclined towards an orderly peace based upon the state, now turned into a torrent which, as it swept ever faster through the centuries gradually grew to the present catastrophe. The individual thirsting for freedom dispensed with the shackles of church and class distinction. The State declaring itself sovereign violated the universal order of God, as represented by the church. Not recognizing any superior power, it began to conquer as much living space (Lebensraum) as it could on this earth, as long as the stronger will of another nation did not impose any natural barriers on it. Peace hence existed only in the naturally rather unstable equilibrium—of powers obeying only their own laws.

So came into existence world empires such as the British Empire, Russia, and the United States, the tremendous French colonial empire which as living space today comprise more than one half of the surface of the entire world.

The theory of war as a crime created by Grotius, the teacher of international law, quoted by the prosecution failed because it was incompatible with the dynamic power of this time. It embodies as we know only an attempt to keep alive through secular arguments the aforementioned concept of Christian warfare. One cannot, however, derive justice from nature alone. It knows no other measure than brute force. It actually always decides in favor of the stronger. Considered from a metaphysical standpoint, justice can be defined as an independent force, set above natural impulse. Therefore the theory of Grotius necessarily petered out in the 18th century as thinking in a purely worldly sense it could not find a criterion for a just war.

From this time on the search for true justice stirs the world. All socialist theories are only attempts of solving this problem. After having been disappointed by the doctrines of too much liberty, mankind once again seeks security and order. Some wish to return to the Christian truth of God while others want to go forward in order to solve the problem through human intellect eventually. The National Socialists, whose most revolutionary leaders wanted to go further backwards and at the same time forward to a self-deification of life in a biological political sense, have been conquered and eliminated. Yet a solution of the problems of world order has hitherto not been found. The victorious powers intend to come close to it, however, by drawing a line between themselves and the vanquished through a common indictment and punishment of the same as criminals.

Fundamentals of Law

From whence will they take the standard by which to decide about justice and injustice in a legal sense? Insofar as such standards exist by international law, valid up to now, further statements are not required. That a special court for the trial was created by the Charter of this tribunal I also do not object to. I must, however, vigorously protest against its use, insofar as it is meant to create a new material law, by threatening punishment for crimes which, at the time of their perpetration, at least as far as individuals are concerned, did not carry any punishment.

Can one expect. that hereafter punishment will be recognized as just, if the culprit was never aware of it, because at the time he was not threatened with such punishment, and he believed to be able to derive the authorization for his way of acting solely from the political aims pursued? What does a reference to the ethical laws help, if such must be first found again? According to Justice

Jackson's opinion, however, the Nazi Government never from the start was the representative of a legitimate state which had pursued the legitimate aims of a member of the international community. Only from such an attitude can the indictment for conspiracy be understood which is to be discussed later. In fact this (indictment) is far ahead of its time as is the whole way of argumentation by Justice Jackson. Because internationally recognized standards—outside the positive international law—by which the legitimacy of states and of their aims could have been judged did not exist, just as little as an international community as such. Slogans about the legitimacy of one's own and of the illegitimacy of foreign aspirations served only the formation of political fronts just as the efforts to brand political adversaries as disturbers of the peace. In any case they did, indeed, not create law.

Justice Jackson declared justly, that it would have been possible for the conquerors to deal with the conquered as they saw fit. But, said he, non-discriminatory executions or without a final establishment of guilt would be a breach of promise given repeatedly. For this reason he himself proposed judicial proceedings which would have to differ from the ordinary criminal proceeding by not admitting the usual tactics of obstruction and delay by the defendants. But an establishment of guilt should be made, based on a just and fair trial. If the defendants were the first leaders of a conquered nation which had to answer before the law they were also the first ones to whom the opportunity was given to defend their lives "in the name of justice".

If this sentence is to have a meaning then it must be of signification for interpretation of the Charter. Because it would not be reasonable that the court were obliged to stand exclusively by the Charter without taking into consideration international law recognized hitherto and convictions of others with regard to law. In that case the judgment would rather become a pure dictate of force to appeal against which "in the name of justice" would make no sense.

The Charter may therefore be applied by the court only insofar as its decrees are justifiable before the conscience not only formally but also materially. The Charter itself says that nobody may be excused for a violation of its decrees by hiding behind an order of his government or of a superior. In that case it must apply this, its own logic also to itself by allowing the judge to examine the congruence of its prescripts with the general principles of just ways of thought. For a judge, after all, is far more free and independent from the law maker than a subaltern from his superior or a subject from his dictator.

Nulla poena sine lege praevia

Then there is another question, whether really decrees of the Charter are so much in opposition to the previous and ordinary state of law especially to the fundamental ideas of all rules of law that the court cannot acknowledge them as right or apply them. Practically the most serious problem consists thereby in the decision what should have precedence in the case of conflict, the Charter or the legal maxim "Nulla poena sine lege praevia".

One has tried to justify the exceptional case of disregarding this rule in this given instant with the highly political character of the trial. Such a justification, however, cannot possibly be recognized. The political significance of this trial shows itself otherwise by its consequences near and far, but not yet in the very procedure by influencing the legal norms to be applied. A judge should administer law but not deal in politics. He is called upon still less, to rectify mistakes made by the politicians. Punishment, the establishment of which in due time was neglected, may only be decreed by him on the strength of a subsequent law, if he would do this also in other cases, but not only as an exception to please the politicians.

Because, as a principle the maxim of the division of power is supposed to be maintained. By this principle Montesquieu divided the originally united power of the absolute King into legislative, administrative and judiciary. The three different forms of expression of state domination were, having equal rank, to be in equilibruim and so to aid in controlling one another. This system of division of powers characterizes the modern constitutional state. In a slightly strained way one may define the field of activities and competency of the three different forms of expression of sovereign authority in stating that the legislature has to deal with the future, administration with the present, and judiciary with the past.

The legislature sets the standards to which life is to conform. From time to time these must be changed and put in accord with the changed way of living. But till then they remain valid.

Insofar as a mere establishment of norms of life is not sufficient it will be formed, case by case, by the administration. The administration itself is bound by certain norms, but on principle has free play within the lawful bounds of its good judgment so as to be able to respond to the daily changing needs. For it, just as for the lawmaking politician, the idea of serving a purpose is decisive.

The judge on the other hand may not decide according to the usefulness but shall decide according to the law. In general it is not his task to create, but to judge. He has to judge the actions after they were committed and the conditions after they have arisen, whether and in how much they corresponded to the standards respectively, what juridical consequences they have brought about. Therefore, as a matter of principle, his view is directed towards the past. In the life of the state, which is continuously inspired by politicians looking to the future, he is the steadfast counterpole serving as a brake.

Though he is bound by the laws decreed by the politician, he is not merely an executive organ. On the contrary he should control the lawmaker by reexamining the laws with regard to their conforming to the constitution. Therein, in any case, according to reason, would belong the examination whether the principle of the division of powers was maintained. Because just as the judge may judge but, "de lege latea" and must leave the decisions "de lege ferenda" to the lawmaker, the latter is obliged in reverse not to meddle with the former's competency by giving laws with retroactive power.

The criticism of the administration of justice of the National Socialist state is mainly based on its having abandoned the division of power. By putting at the top the political leadership idea (Fuehrerprinzip) it meddled despotically with the competency of the judges. By means of the police, i.e., the administration, it arrested and imprisoned people without judicial warrant of arrest only for reason of political prevention, and even arrested others that had been acquitted by the judge and set free. On the other hand for political reasons, convicted criminals were withdrawn from the hands of justice. Thereby quite naturally, safety and clarity of the law were seriously endangered.

Thereby a certain degree of protection against arbitrary judgments and the splitting up of law, lay in the fact that the National Socialist State was based on a specific ideology by which the judge was bound.

Concerning the close connection between finding of justice and ideology, the Swiss Professor of law Hans Fehr Bern already in 1927 wrote in his book, "Law and Reality; insight into the growth and decay of the forms of law" ("Einblick in Werden und Vergehen der Rechtsformen"). He says literally:

> "Ohne Weltanschauung schwebt das Recht in luftleeren Raum * * * Wer keine Weltanschauung besitzt, kann auch keine Rechtsanschauung haben * * *."

Translation: "Without ideology law floats in a vacuum * * * Anyone who has no ideology, can not have a sense of right or wrong either * * *."

In contrast to this a decisive ideological base as a foundation of the Charter is not recognizable. As its signatories stand on very different ideological ground we will have to start out in it, as in the international law valid hitherto, from the liberal idea of freedom of ideology. Therefore the legal thesis "Nulla poena sine lege" should be especially sacred for it. This is also proven by the fact that the Control Council for Germany, by abolishing the criminal analogy of article 2a of the criminal code, brought the above maxim back again to all Germans most emphatically.

Nor does an examination of the political aims connected with the Charter help out. Justice Jackson has called the Charter and the Trials a step in the direction: "To create a juridical guarantee that, who starts a war, will pay for it in person". The American commentator Walter Lippmann stated elsewhere, that the system of collective security for the prevention of wars had broken down, because nobody was prepared to declare war on the breaker of peace in order to help prevent a war which did not directly affect him.

The means for combating the disease of war would have been just as bad as the disease itself. In consequence of the fiasco of the collective methods, the thought to base security in the future upon holding responsible those individual persons accountable for breaking the peace crystallized with the enemies of Germany in the last war. And so it led to the Nurnberg trial. Taking one's starting point from this fact today one could say: During this second world war revolutionary developments have taken place. It has driven humanity beyond the sphere of what has been the modern age until a short time ago. The first but essential steps to create a world state have been made.

The way to peace, as shown here by Lippmann, will be welcomed on principle although one still will doubt its absolute reliability. Justice Jackson himself has expressed doubts whether punishment will be a warning and help prevent breaking the peace in the future. Only one who is certain of victory will decide to wage a war and so will not seriously consider punishment which will reach him only in the case of defeat. Therefore the educational issue of this trial, to strengthen the sense of justice, seems more important than the effect of deterring which can also be achieved by warning for the future. The politician will have to learn that the principle of division of power will also have to be observed by him and that he will not find a judge willing to mend his mistakes afterwards by punishing on the basis of future laws. The confidence in international jurisdiction, which today still suffers from the suspicion of being easily misused for political purposes, would be raised considerably through such a decree. And so even under the viewpoint of political usefulness the violation of the sentence "Nulla poena sine lege praevia" could not be justified. On the other hand, however, one must realize that the strengthening in the belief of the inflexibility of justice as the basic pillar of the tremendous dynamic of political forces, serves peace best.

This result can also not be questioned on the basis of the individual considerations presented by the representatives for the defendants.

The French prosecutors have pointed out that an active international law could not be imagined without international morals and that a moral code has to preceed all claims for freedom by the individual as well as by the nations. These certainly are facts well worth considering. Correctly considered, however, they speak only for my viewpoint that the strengthening of the sense of justice must not begin by violating it.

When the French chief prosecutor declared that in the future there could be no belief in justice by not punishing the chief culprits of Nazi Germany, then obviously he went too far in the enthusiasm of the speech. Justice does not grow out of obtaining at any price satisfaction for the violated sense of justice. Otherwise we should quickly arrive again at the endless chain of horrors, at vendetta. No, justice demands moderation and consideration of motives and counter-motives. And there the one-sided action itself against members of the Axis powers violates the idea of justice. It is impossible to justify by it a direct violation against it, that is, against the otherwise commonly prevailing rule: "Nulla poena sine lege praevia".

The British Chief prosecutor himself declared the possibility of subsequent legislation for one of the most offensive doctrines of the National Socialistic legal terminology. With this he meant that the possibility of punishing an act already marked as a crime does not mean a change of the legal situation but only its logic development, and therefore is permissible. But I do not at all want to contest the institution of the Tribunal thereby justified by him. Rather the question arises whether this tribunal is obliged to punish even though no penal law can be found which threatened the offense with punishment already at the time of their committment. The affirmation of this question would go much further than the National Socialistic judicial procedure rejected so vehemently by the British chief prosecutor. He did not present the slightest reason for it and therefore he himself seems to disavow it.

Moreover he should be prepared to admit that the Charter would have stated clearly and unambiguously, if it did not only presume but possibly also establish the basis for the punishableness of acts referred to by it. The passage involved in Para. 6 of the Charter completely lacks such distinctness. It reads:

> "The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal * * *"

and may be interpreted in the sense of a mere regulation of competence as well as, even though with difficulty, a regulation which first establishes punishableness. Therefore, this passage must in any case be interpreted in favor of the defendant according to the established legal principle "in dubio pro reo". The following sentence:

> "for which there shall be individual responsibility"

and the material regulations for punishment quoted in the following paragraphs, present, according to their wording, no reason for doubt as to their interpretation. However, they contain only modifications for an established punishableness. The Tribunal may decide whether or not they are compatible with the principle "Nulla poena sine lege praevia".

Most difficult to understand for me is the viewpoint of the American prosecutor. On one hand he passionately disavows all legal arbitrariness of the Nazis. On the other hand he is not prepared to acquiesce in the punishment of the defendants only for those crimes which were not only considered punishable at the time of being committed but also actually threatened with punishment. On one hand he does not want executions or punishment without first having accomplished the determination of guilt in a fair manner. On the other hand he demands a strict application of the Charter even though it contains new law surprising the defendants. On one hand he wants the trial to appear to future generations as the fulfilment of the human yearning for justice. On the other hand, in the face of objections to the Charter, he bluntly presumes upon the power of the victorious who really could have made short work with the defendants.

As far as the political side of this process is concerned I already stated why it must not exert an influence on the outcome of this trial. I wish to point out here that a policy which is tested out by the victors on the vanquished and therefore may be characterized as one of "the weakest resistance", has once before proven to be a failure.

Conspiracy

Of the crimes of which the defendants are accused conspiracy is most extensive as regards time and object. Professor Exner, in his capacity as a University teacher of criminal law, occupied himself in particular with the importance of the legal conception for our process. In order to save time by avoiding a duplicate report Professor Exner has placed the result of his research at my disposal.

In conformity with him I have to present the following regarding this question:

The conception "conspiracy" belongs to the Anglo-American law sphere. There, however, it is not at all uncontested, rather the opinion is noteworthy as being represented in England that this conception is long since obsolete: "It has been said that in England this law has become entirely disused." (Report of a judge in Regina *v.* Parnell and others—Kenney, Selection of Cases illustrative of English Criminal law, Oxford 1935, p. 145). In these proceedings it is a different point that matters. The concept of "Conspiracy", as used by the prosecution, is entirely unknown to German law. I would like, therefore, to begin my short legal argument with two questions which give rise to doubts.

1. May a criminal procedure, which is bent on realizing justice, use legal concepts which are and always have been utterly alien to the defendants and to the legal trend of thought of their people?

2. How would this be consistent with the rule, Nullum crimen sine lege praevia, a principle which the British chief prosecutor has acknowledged as a fundamental principle of civilized criminal law jurisdiction? Can it be honestly stated that already before 1939 not only the initiating of an illegal war was held to be an act punishable individually, but moreover a "conspiracy" for initiating such wars? The affirmative answer to this question given by the prosecution has surprised not Germany only. May I clear up, in this connection, a misunderstanding. It has been said that the National Socialist state itself had issued criminal laws ignoring the rule: "Nullum crimen sine lege", so that the defendants had no right to invoke this rule. It is by no means my purpose to defend National Socialist criminal law, but honesty compels me to say that this is an error. The Third Reich has—as mentioned before—issued three laws increasing the penalty for an action with retrospective effect by applying the death penalty to acts which carried when committed, prison sentences only. But in no case has—till now—a lawful act been declared punishable, nor an act considered not to be a crime, retrospectively converted into one. And this is the case here. But the Charter, which I follow now, has enjoined the use of the concept of "Conspiracy". I do not, therefore, go any further into these questions. At any rate, it would appear that if such a concept is to be applied to Germans, this could only be done with all restrictions imposed by equity.

Anglo-American law defines conspiracy as an agreement between a number of persons for accomplishing crimes. BLACK, Law dictionary 1933: "a combination or agreement between two or more persons for accomplishing an unlawful end or a lawful end by unlawful means." Similar definitions always keep occurring. Two points are characteristic: "Agreement" and "Common plan." Agreement means an explicit or tacit understanding. If some persons pursue the same end independently of one another, then there is no conspiracy. It is accordingly not enough that the plan is common to all of them, they must have knowledge of this community and every one must voluntarily accept the plan as his own. The very expression "to conspire" involves that everyone contributes knowingly and willingly. A person under duress is no conspirator, duress does not produce agreement, at the utmost in purely external assistance. For instance, if somebody imposes his will on another, then there is no conspiracy. A conspiracy with a dictator at its head is a contradiction in itself. A dictator does not enter into a conspiracy with his followers, he does not make any agreement with them, he just dictates.

Knowledge and will of the conspirators are aimed at a common project. The contents of such a plan can be very different. In English law, for instance, conspiracies are known for committing murder, fraud, blackmail, false accusation, certain economic delicts (Stephen, Digest of criminal law, 6th vol., p. 39, 70, 113, 124, 137, 192, 305, 390). In all these cases conspiracy is treated as a crime by itself (sui generis) and, therefore, the conspirators are punishable for conspiracy regardless of the fact whether a murder, a fraud or even a mere attempt at such crimes has been committed. According to German terminology we would say: conspiracy is one of the cases, where even preparation of a crime is punishable. Such cases are known to German criminal law. The partner in an agreement for committing a crime against life is punishable. According to Art. 49b he is punishable for a "crime of preparing any killing" even if the intended action has not taken place. In a certain sense par. 129 can also be applied here. Partnership in an association pursuing certain aims hostile to the state is punishable, again independently of the fact, whether a crime has actually been committed. But if it comes to an action, everybody is charged with his own culpability in this action. If it happens that the individual conspirator is guilty neither as the perpetrator nor as an abettor nor as an accessory of the actual crime, then he can be charged with partnership in an association hostile to the state but not with such a crime.

The prosecutors in this trial are going further. They want to punish, under certain circumstances, the conspirators for individual actions they do not participate in. To take the most significant example, they want to charge a conspirator even with those crimes which were committed prior to his entering the conspiracy.

With the scant material at my disposal I was not able to find any evidence as to whether this has any foundation in English or American law. One thing is certain, however, that such a conclusion is utterly contrary to German criminal law. For the latter is based on the self-evident and unanimously accepted principle that one is only responsible for an action when one has been the author, or at least the part author of it.

Let us look now at the Charter. The Charter quotes two cases which are declared as punishable and which fall within the competence of the Court:

1. Paragraph 6a, partnership in a common plan or conspiracy for the perpetration of a crime against peace. As such are listed the planning, preparation, launching and conducting of a war of aggression or of a war involving a violation of international treaties or assurances. It is remarkable that a concept which belongs to the internal criminal and civil law of England and America is applied here, without more ado, to international facts. The Charter does this by treating individuals who plan or conduct illegal wars as gangsters participating in a highway robbery. This is legal audacity, because in this case the sovereign state stands between the individuals and the result of their actions, and this removes any foundation from the comparison with facts in international daily life. Up to now the concept of conspiracy has been unknown to international law. According to article 6, last paragraph, of the Charter the partners in a conspiracy or in a common plan to commit crimes against peace, the law of war or humanity are responsible for all actions committed by any partner while executing such a plan. This is, as a matter of principle, quite another thing from the case mentioned in 1. It does not mean punishment of the crime of conspiracy, but responsibility for the individual action of another conspirator. In other words, conspiracy, as taken here, is not a crime sui generis, but a form of complicity in the actions of the conspirators. Mr. Justice Jackson has given us an example: If three robbers conspire and one of them kills the victim, then all of them through their complicity are responsible for the killing.

2. Case 2 is of the greatest importance in this trial. The individual conspirator is to be punished for crimes committed not by himself, but by another conspirator. A defendant who had nothing to do with the annihilation of the Jews is to be punished for this crime against humanity only because he was a partner in a conspiracy.

The question at issue is: In this trial are principles of responsibility to be applied which go beyond our German ones?

Article 6 of the Charter says that all conspirators are co-responsible for any action committed by any one of the co-conspirators "in execution of such a plan". These are the decisive words for the interpretation.

In my opinion, the meaning of these words is as follows: The other conspirators are co-responsible for any actions of their comrades which form part of the common plan, or which they therefore have helped think out or have willed or have at least accepted. A few examples:

a. A, B, C, D commit a concerted house-breaking in a villa. They happen to find a girl in the house, and A rapes her. B, C, D cannot be charged for this rape. The reason is that A did not do so, when committing the crime, "in execution of the plan" but if anything, at the "occasion of execution of the plan". The point at issue is not the execution, but merely the occasion arising while executing the plan. This opinion, which should not be disputed, is of importance, as it makes it clear that there cannot be any question of responsibility for all the actions of the partners to the conspiracy.

b. While exploring the villa, B and C come to fight about some piece of plunder, and B knocks down C. This action too was not committed "in execution of the plan", but was foreign to it. A and D are not responsible for this "excess".

c. While exploring the villa, the burglars are detected by the owner. D shoots him. Now the issue depends on the special circumstances of the case. Let us, for instance, go back to the example, quoted by Mr. Justice Jackson, of the three robbers, one of which kills the victim. Considering the nature of American gangsterism, it would appear quite normal that the individual gangsters concerned bore in mind the possibility of such an occurrence, and were quite prepared to approve of it. If this is the case, they are responsible for the killing, as accessories or assistants, also according to our opinion. In such a case, there would be no objection to Mr. Justice Jackson's solution. But if the case is different, if the fatal issue had not been foreseen by the others, could not even perhaps be foreseen—e.g., if they took it for granted that the inhabitants of the house were away from home—then there is no responsibility of the co-conspirators. They are responsible only for acts belonging to the "execution of the plan", and such a common plan includes only what has been foreseen, from the beginning, and approved. Other ways of execution are alien to the plan. Mr. Justice Jackson's argumentation is fallacious in so far as he derives a common principle from a decision which clearly and obviously happens to apply to the "normal case" of his paradigm of the robbers, and can hardly be applied to any other case. As the case stands, co-responsibility of any single act could be made to apply to those conspirators only who have foreseen and approved of their comrades' act.

A legal principle extending the fellow-conspirator's responsibility to such cases as are not included in their common responsibility, is alien to German law. Whether it belongs or not to Anglo-American law, the application of such a principle in the present trial would indeed make punishable acts which heretofore could not be punished. This would clearly contradict the rule: Nullum crimen sine lege praevia, a principle acknowledged explicitly by the British prosecutor too. In view of the fact that Article 6 can be interpreted in various ways, we should select out of two possible interpretations, as corresponding to the author's will, the one which does not contradict the said rule.

There exists a withdrawal from a conspiracy, and also a subsequent entrance into it. The question is: What about responsibility for acts committed during non-membership? The prosecution appears to be of the opinion that a person entering into the conspiracy hereby approves anything previously done by any conspirator, in pursuance of the common plan. Such an assertion seems to arise out of the civil law theory of a subsequent ratification of a business transaction. This theory cannot apply to criminal law. The Charter does not mention anything of the sort as the common plan, the execution whereof involved the act, was common to those who were members at that time. Even if one takes the act of joining the conspiracy to be an approval of its acts so far committed, the approval of a committed crime does not involve partnership in this crime.

The person joining later has nothing whatever to do with these crimes. The same applies to the withdrawal from the conspiracy, the person withdrawing can be made responsible only for what happened during his partnership, even if a result has occurred after his withdrawal. Again any other opinion would lead to the result, that a law "ex post facto" is being applied in a conspiracy within the meaning of the indictment, viz. a conspiracy to commit crimes against Peace, Usages of war and Humanity?

If such a conspiracy had existed, then Hitler would have been—nobody doubts it—the leader of these conspirators. It has been already emphasized that a conspiracy headed by a Dictator is a contradiction in itself. Hitler would have laughed if he had been told to have made an agreement with his ministers, party leaders and generals, to wage this or that war or to conduct the war by these or other means. He was an autocrat. He did not care for the approval of those men, but was merely concerned about having his decisions executed, whether they agree to these decisions or not.

Quite besides this legal consideration, Hitler's environment did, in fact, by no means appear as a community of conspirators, as considered by the prosecution, and that before the hearing of evidence. Apart from a small party clan, he was surrounded by an atmosphere of distrust. He trusted neither the "defeatist club" of his ministers nor his "generals". Such was already the case before the war, and what his surroundings looked like during the war has been shown by witnesses with great impressiveness. A cunning system of secrecy ensured that plans and aims of the Fuehrer's remained unknown to his collaborators as long as at all possible, so that his most intimate assistants time and again were taken by surprise by the events, and, in fact, were shocked to learn some of them at the present trial only. This system of secrecy also ensured an isolation of his individual collaborators, as one hand was not allowed to know what the other did. Does this look like a conspiracy? In fact, Hitler complained at times that the generals were "conspiring" against him, and used, strangely, this very word while speaking of those who to-day are charged with having conspired with him. The evidence repeatedly mentions conspirations, but conspirations against Hitler.

From a purely psychological point of view, it is, to say the least, highly improbable that the score of survivors of the Third Reich picked out and put into the dock by the prosecution have ever formed a gang of conspirators in the sense of the indictment. Any homogeneity is lacking in this group of people as to outlook, background, education, social position and function, and part of the defendants only met in the dock.

The prosecution considers the party with its organizations as the nucleus, around which the conspiracy formed. We should, however, in this connection too, consider the different individual attitude. Some of the defendants have not been party members at all, or, at any rate, not for a long time, and but few of them have played an important part in the party. Some held top positions in the party and its organizations and devoted their entire activity to the aims of these organizations, while others did everything in their power to eliminate from their sphere of activity any influence of party and SS.

The foundation of the NSDAP took place in a period of utter powerlessness of the state and of general war-weariness of the people at a time when, truly, no intelligent person thought of a second war or, even less, about a war of aggression.

But were any of the defendants aims unattainable without war?

Surely, the wishful dream of every true German was the union of all adjoining German territory with the Reich. This applied to the Saar territory, Austria, Memel, Danzig, and, as a hope lingering in the far future, also to the Sudeten territory. They all had been in the past parts of the German Reich, they all would have already returned to the German Reich in 1919 if the right of self-determination solemnly promised to all peoples had been realized. But these objectives of German longing could be reached by peaceful means. And, in fact, they have been reached without a shot or a stroke with the one exception of Danzig, which would have been done in the same peaceful way if the Fuehrer had had a spark of patience and the Poles a spark of goodwill. But they neither wanted nor believed in a war. Hitler was believed capable of a large scale bluff, but not launching the catastrophe of a war. I cannot, therefore, believe in a conspiracy to commit crimes against peace and usages of war. May I add two points of general importance:

1. The first point refers to Goering's attitude previous immediately to the outbreak of war. He was at that time Hitler's confident friend, the country's second man, and is now the chief figure among the defendants. If there had been, in truth, a conspiracy to launch wars of aggression at that time, then he would have been the second in importance in such a conspiracy, but it was actually he who tried everything within his power, in the last days of August, 1939, to prevent the attack on Poland, and who tried behind Hitler's back to uphold peace. How would this be consistent with a conspiracy for initiating wars of aggression? Nor did he agree with a war against Russia, and he strongly dissuaded the Fuehrer of such a war.

2. If there had been a conspiracy to commit war crimes, then the war would have been waged, from the beginning, with utter ruthlessness and disregard of rules of war. Just the contrary actually happened. In fact, in the first years of the war, international law was on the whole, respected. Especially in the beginning one endeavored to wage war with decorum and chivalry. If any evidence is needed, a look into the orders of the German High Command regulating the behavior of the soldiers in Norway, Belgium, Holland is sufficient proof. Moreover a leaflet with "10 commandments for the conduct of the German soldier in wartime" was issued to the soldiers. Fieldmarshal Milch has read them out from his pay-book, during this trial. They all obliged the soldier to act loyally and according to international law. A gang of conspirators at the head of the state which plans to wage a war without any consideration of right and morals would really not send their soldiers into the field with a detailed written order saying just the opposite.

I think, if the prosecution believes that these 22 men are conspirators and conspirators against peace, the laws of war and humanity, it is seeing ghosts.

It remains for the defense counsels of the individual defendants to show what relationship their client could have had with the alleged conspiracy.

I just mentioned that Reichsmarshal Goering was the second man in the state. During the trial the prosecution also referred repeatedly to this elevated position of Goering's and tried to make it responsible for the defendant's special guilt, pointing out that Goering, by virtue of this special position knew about everything, even the most secret matters, and had the possibility to intervene in a practical way on his own in the course of government business.

This opinion is wrong and is based on ignorance of the meaning of his position. It meant, according to rank Goering was the second man in the state.

This rank was a consequence of the fact that Hitler, in the fall of 1934, had made a will and by a secret Fuehrer order had appointed Goering as his successor in the government. In 1935 or 1936 this succession was fixed in an unpublished Reichlaw which was signed by all the ministers.

On 1 September 1939 Hitler announced this law in the Reichstag. In this way the successorship of Goering became known to the German people.

Goering's task of deputizing for the Fuehrer in the government now followed but only in the event of Hitler being prevented by illness or absence from Germany—thus this occurred when in March 1938 Hitler spent a few days in Austria.

During Hitler's presence, that is as long as Hitler exercised his office himself, Goering derived no special powers from the deputyship.

During this time his authority was limited to the offices directly under him and he was not entitled to issue any official directives to other offices.

The consequence was, as second man in the state, Goering could neither rescind, nor change, nor supplement Hitler's orders. He could give no orders whatsoever to offices of which he was not directly in charge. He did not have the possibility of giving any binding orders to any other office whether it were an office of the party, the police, the army, or navy, nor could he interfere in the authority of these offices which were not his own.

This position as second man in the state can not therefore be used as especially incriminating for Goering; it is furthermore not fit to serve as a basis for the assumption of a conspiracy.

The defendant Goering never participated in the drafting or execution of a common plan or conspiracy which was concerned with the crimes slated in the indictment.

As already emphasized before, the participation in such a conspiracy presupposes in the first place that such a common plan existed at all and that accordingly the participants had the intention and agreed to carry out the crimes of which they are accused. These presuppositions are not in evidence in the case of Goering. One has to assume the contrary. It is true that Goering wanted to do away with the Treaty of Versailles and to secure again a position of power for Germany. But he believed he could obtain this goal, if not with the legal means of the League of Nations, at least with political means. The purpose of the rearmament was only to give more weight to the voice of Germany. The Weimar Governments, which could not even express the self determination of the Germans after 1918 in the surely very modest form of a German-Austrian customs union, though they advocated this determination themselves, owed the lack of success of their foreign policy for Goering, just as for Hitler, mainly to the lack of respect for the German means of imposing power. Goering hoped, strengthened in his belief by Hitler's surprising initial successes, that a strong German army already by its mere existence would make it possible to secure German aims peacefully, as long as these aims kept within reasonable limits. In politics a state can only have its say and make its voice heard if it has a strong army to back it up, which demands the respect of other states. Only recently the American Chief of Staff Marshall said in his second annual report: "The world does not seriously consider the wishes of the weak. Weakness is too big a temptation for the strong." There was no arming for an aggressive war; not even the Four Years Plan, the purpose and aim of which has been clearly explained by the defendant himself and the witness Koerner was not aimed at the preparation of an aggressive war.

The General Field Marshals Milch and Kesselring have both testified in perfect agreement that the air force created by the armament program was only a defensive air force, which was not fit for an aggressive war and which was therefore called by them a dangerous air force ("Risiko Luftwaffe"). Such a modest rearmament does not allow for any conclusions of aggressive intentions.

After all this it is clear, Goering did not want a war.

In his character he was an opponent of war. Outwardly also in his conferences with foreign diplomats and in his public speeches at every opportunity he has expressed with all possible clearness his opposition against war.

The testimony of General Bodenschatz explains most positively the attitude of Goering to war. He knew him especially from the first world war and he has exact knowledge of the attitude of Goering to war from frequent conversations he has held with him. Bodenschatz states that Goering repeatedly told him that he knew the horrors of war very well from the first world war. His aim was a peaceful solution of all conflicts to spare the German people as far as possible the horrors of a war. A war would always be an uncertain and risky business. It would not be possible to burden with a second war a generation which had already experienced the horrors of one great world war and its bitter consequences.

General Field Marshal Milch also knows from conversations with the defendant Goering that the latter opposed a war, that he already had not agreed with the occupation of the Rhineland and that he advised Hitler in vain against a war with Russia.

In public the defendant Goering in his many speeches since 1933 frequently emphasized how much he had his heart set on maintaining the peace and that the rearmament had only served to make Germany strong outwardly and to enable her to play a political role again.

His serious and honest will for peace can be seen best from the speech which he aimed in the beginning of July 1938 in Karinhall before all the Gauleiters of the German Reich. He emphasized in this speech energetically that the foreign policy of Germany had to be directed in such a way that under no circumstances it would lead into war. The present generation had still to get over the last world war, another war would shock the German people. Goering had not the slightest reason to hide his true opinion before this gathering which consisted exclusively of the highest party leaders. For that reason this speech is a valuable and reliable proof for the fact that Goering really and truly wanted peace.

How deeply the defendant Goering was interested in maintaining the good relations with England is shown by his conduct at the conference with Lord Halifax in November 1937 at Karinhall, in which Goering, with full candor, put before Lord Halifax the aims of German foreign policy:

a. Incorporation of Austria and the Sudetenland into Germany.

b. Return of Danzig to Germany with a reasonable solution of the corridor problem.

He pointed out at the same time that he does not want war for these aims and that England could contribute to a peaceful solution.

The meeting in Munich in the fall of 1938 was arranged at his suggestion. The conclusion of the Munich Pact is essentially due to his influence.

Due to the occupation of the remainder of Czechoslovakia in

March 1939, the relations with England had deteriorated considerably. As England was very angry about this step of Hitler's, which was a violation of the Munich Pact, Goering made serious efforts for the restoration of normal relations.

In order to achieve this goal he arranged the meeting, described by the witness Dahlerus, with English industrialists at the beginning of August 1939 in the Soenke-Nissen-Koog near Husum. In an address he pointed out that under no circumstances must it come to a war with England and he asked those present to contribute to the best of their ability to the restoration of the good relations with England.

When, after the often quoted speech of Hitler's to the commanders in chief of the armed forces on the Obersalzberg on 22 August 1939, the danger of a war became imminent, Goering summoned immediately, that is already on the following day, the witness Dahlerus from Sweden and attempted, bypassing the Foreign Office, to reach an agreement with England for the prevention of the war on his own responsibility.

The objection was raised here that Goering had left Dahlerus in the dark as to his true intentions. His efforts were not aimed at the maintaining of peace but only at persuading England to deny to the Poles the support guaranteed to them and to separate England from Poland, which would enable Germany after this separation to exert pressure on Poland to submit to the German demands or to be able to attack Poland and to realize her plans towards Poland without any risk.

The doubts about the honest will for peace are unjustified; the imputed intention was far from Goering's thoughts.

If this objection is based on the fact that Goering did not inform the witness Dahlerus either of the content of the Fuehrer speech of 23 May 1939 or of the 22 August 1939, this objection is not relevant and nothing is gained by it.

Under no circumstances could Goering inform a third person and especially a foreigner of these strictly confidential speeches without exposing himself to the accusation of high treason or treason against his country. These speeches were all immaterial for the commission given to the witness, since here was the peculiar situation that Goering—after the efforts of the diplomats had reached a deadlock—knew as ultimo ratio of no other way out than to use his personal relations, all of his personal influence, and his personal prestige.

What alone mattered for the activity of Dahlerus was that the political situation had become dangerously critical through the quarrel between Germany and Poland, of which also the witness knew and which had to be straightened out by an appropriate attitude on the part of England.

That Goering's aim was not to separate England from Poland has been clearly proven by the fact that Goering, to begin with, had transmitted to the British Ambassador in Berlin, Henderson, the text of the note which contained the proposition made by Germany to Poland—propositions which were called moderate by Henderson—and that, hereby, he tried to come to direct negotiations with Poland. Poland, however, obviously did not want an agreement with Germany. Several circumstances point to that.

a. The conflict with Poland existed for almost one year. Why did Poland not ask for a decision by a court of arbitration on the basis of the concluded arbitration agreement? Why did Poland not appeal to the League of Nations? Obviously Poland did not want any arbitration regarding Danzig and the corridor.

b. The utterance of the Polish Ambassador Lipski to the Counsellor to the Legation Forbes, which was stated by the witness Dahlerus is even more proof for the unwillingness of Poland to come to an understanding. Lipski said he was not interested in any note or proposition by Germany; he was convinced that, in the event of a war, there would soon be a revolt in Germany and the Polish Army would march in triumph to Berlin.

This intransigent and incomprehensible attitude of Poland obviously finds its explanation in the fact that she felt too strong and secure by England's assurance.

The reference to the imminent revolt makes one believe that Poland was informed of the plans of the Canaris group to bring about a revolt. There can therefore be no question of an ambiguous attitude or false play on the part of Goering.

The serious will of the defendant Goering to maintain peace and to restore good relations with England is expressly recognized by Ambassador Henderson, who due to his thorough knowledge of the German conditions and his connections with the leading men of Germany had the right opinion also of Goering. I refer here to his book "Failure of a Mission", in which on page 83 it says verbally: "I would like to express here my belief that the Field Marshal, if it had depended on him, would not have gambled on war as Hitler did in 1939. As will be related in due course, he came down decisively on the side of peace in September 1938."

Lord Halifax also, according to the information he gave, had no doubts that Goering's efforts for the prevention of war were sincere.

That after the outbreak of the war, which he had wanted to prevent with all the means at his disposal, but had been unable to prevent, Goering, as Commander in Chief of the air force exerted all his strength to win the victory for Germany is not contrary to the sincerity of his will to avoid the war. From that moment on he knew only his duty as a soldier to his fatherland.

At different times Hitler made addresses to the Commander in Chiefs of the armed forces, for instance in November 1937, on 3 May 1939, and on 22 August 1939. The defendant Goering, at his personal interrogation has already given extensive explanations as to the importance and the purpose of these addresses. It is important for the question, whether the fact that he was present at these addresses might constitute perhaps a complicity in a conspiracy in the sense of the indictment, that on these occasions Hitler solely and one-sidedly made known his opinion about military and political questions. The participants were only informed what possible political developments Hitler expected. The participants were never asked for their opinion. They also had no possibility to express their criticism to Hitler's opinion. Hitler did not ask his generals to understand his orders. All he asked of them was to carry them out. His autocratic leadership of the state was exclusively directed by the principle: Sic voleo, sic iubeo, stat pro ratione voluntas, which he carried through to the last consequence.

How rigidly Hitler followed this principle can be seen from the fact that, after the address of 23 May 1939, as Milch stated in his testimony, he forbade expressly all discussions of those present, even among themselves.

That Hitler was irrevocably resolved to an aggressive war could not be deduced by the participants from the said speeches and they did not deduce it. This has been confirmed unanimously by all witnesses who were present when those addresses were given.

At that time Hitler had actually not yet planned a war. In that respect the testimony of General Field Marshal Milch is very informative. Then this witness, in the months following the speech of 23 May 1939, repeatedly pointed out to Hitler in personal reports that the air force was not ready for action with their bombing squadrons and that the air force had hardly any stocks of bombs, Hitler refused to give an order for the production of bombs and remarked that this manufacturing was not necessary and superfluous. Hitler persisted in this refusal although Milch pointed out that the production would take several months. Such an order was given by Hitler on 12 October 1939.

Hitler's exposition before the Commander in Chiefs can be easily explained by the peculiarity of Hitler to develop frequently political ideas without bothering how to carry them out. In each case, his practical policy resulted from the requirements of the living development.

Economic Warfare

The defendant is accused of having ruthlessly plundered the territories occupied by Germany and thus to have violated the Hague convention concerning land warfare. This accusation is not justified.

During his examination, the defendant Goering has explained in detail with absolutely noteworthy reasons that the Hague conventions on land warfare from the years 1899 and 1907 respectively cannot be made to apply to a modern war since they had become obsolete and insufficient in some respects at the beginning of World War II. At the time when they were worked out, aerial warfare, economic warfare, and psychological warfare were still unknown. Total war, which put the entire people and the entire national economy without exception at the service of the war, was also not known. Especially, economic warfare was not considered at all. Because of this gap, there is no international law which has been generally recognized for economic warfare. Therefore, the old statement of Hugo Grotius applies to economic warfare that everything is permitted in war "quod ad finem belli necessarium est".

Naturally, this principle only applies so far as it has not been affected specifically by a differing settlement through treaties.

The following is to be said for the legal situation as it stands: Until the beginning of World War I, it was generally acknowledged in international law—in any case as far as land warfare is concerned—that the war does not affect any private legal relations between the citizens of the belligerent states, that private property on principle was inviolable, that the war would only be pursued with arms, and that the enemy civilian population would not be affected by it. This method of warfare suffered a basic change at the outbreak of World War I, when England, in the field of naval warfare, applied her interpretation of war of people against people. At that time, the enemy powers went over to the course to paralyze the entire German national strength, disregarding all established rules of the law of naval warfare and of neutrality law, by cutting off the necessary raw materials and import of food. This new type of warfare corresponded to the Anglo-Saxon interpretation which was joined by France at the beginning of World War I, that war is not only fought against the fighting troops, but against the entire population of the enemy. The citizen of the enemy state is the enemy of England, his property is enemy property which is subject to seizure by the British Government.

With this, naval warfare was not only directed against the combat forces, but also against the peaceful subjects of the belligerent enemy.

This goal was achieved by the total blockade carried out by England. The Hague convention did not contemplate a total blockade in the form in which it was carried out by England. This blockade made any supplying of Germany through neutral countries impossible.

This economic warfare which has also been applied to Germany during World War II in the same manner by the enemy states is not a legal method of warfare; it involves a violation of established international law.

Under these circumstances, Germany cannot be blamed for applying the method used by England with means of her naval power for the warfare on land accordingly.

This fact leads to the following consideration: The rules of land warfare (LKO) applies according to its sense to land warfare. There the principle of protection of private property dominates. In naval warfare, however, private property is unprotected. It is therefore possible that the rules of land warfare (LKO) with their restrictions apply also to a combined sea and land war? Would it be just that goods are taken away from one at sea while he would not be allowed to touch the same goods from the one taking the goods on land?

According to established international law, the principle exists now as before that private property is actually inviolable during war. This principle only suffers exceptions insofar as the Hague convention of land warfare permits certain encroachments on private property—I point out here articles 23g, 52 and 53, paragraph 2—and insofar as encroachments may also have been caused by a state of emergency in which the state may find itself which then would be justified to the extent in which they appear necessary in the interest of self-preservation of the state. In this scope therefore, actions are also permitted during war which would otherwise not comply with the laws of war, and would thus be contrary to international law.

By the fact that enemy warfare disregarded the established rules of naval warfare, Germany was driven into a state of economic emergency.

If the enemy powers would have observed this established law of naval warfare, then Germany could have supplied herself through neutral countries. Therefore the state of economic emergency during the war would not have occurred if the blockade of Germany would not have been carried out by means contrary to international law. As the enemy powers did not however observe the established blockade regulations, they cannot expect then for Germany to observe the regulations on requisitioning which form part of the rules of land warfare (LKO).

Thus, wherever the life interests of a state are threatened in this manner, there prevails a national state of emergency which has the legal effect that the state does not act illegally when committing a violation of international law which is necessary for the repelling of imminent danger.

The economic situation of Germany was extremely threatening during the course of World War II by the action of the enemy powers. Any connection with neutral countries was made impossible for Germany by the total blockade, since a sufficient supply of raw materials necessary for the conduct of the war, and of food for the feeding of the civilian population, was made impossible. Germany also had to take care of the food supply of the enemy civilian population in the occupied territories. Germany was therefore forced for the sake of supporting her own economy, which would otherwise have collapsed, to use the stocks of raw materials and food available in the occupied territories, and all other items necessary for the continuation of the war for herself, whereby the interests of the population in the occupied territories were given due consideration. In this, the principles, established in the preamble to the convention concerning the rules and customs of land warfare, dated 18 October 1907, as they result from the customs existing among civilized nations, from the laws of humanity, and from the demands of public conscience, were strictly observed. A resignation of the right to use these sources of assistance in the occupied territories would have meant the abandonment of the independence and existence of the state, it would have meant unconditional submission. An emergency which necessarily leads to submission during war is the highest and most genuine emergency in the life of a nation.

By referring to the state of emergency, however, only such actions are covered which are necessary for the alleviation of danger which could not be repelled otherwise. The limitations naturally fluctuate, and the establishment, whether a genuine emergency act is concerned, cannot be easily made in individual cases. Here the Tribunal will have to consider in favor of the defendants the special circumstances and the conditions which were partly hard to view during the time of war.

It has not been proven that the limitations have remained unobserved by the defendant intentionally or carelessly.

It must be left to the examination of the Tribunal whether the defendant personally can be responsible for a violation, possibly committed intentionally or carelessly, a violation which has been committed exclusively by him in his capacity as plenipotentiary of the Fuehrer, or whether in such a case there is only a liability of the state. This side is of the opinion that also in this case there is only a violation of international law which does not call for a personal liability. Conditions are peculiar in the Eastern theater of war because there was no private economy in Russia but only a national economy strictly regulated by a central office. The juridical situation here was that property of the enemy state could generally be claimed as war loot. For the rest, a particularly careful regulation was made, which was defined in the so-called "Green folder." The regulations contained in the "Green folder" did not suggest any looting or annihilation of the population, as asserted by the prosecution. Its tenor was rather the mobilization of economy and the rules for keeping it going, the seizure and the orderly utilization of stocks and traffic installations in the zones to be occupied in the course of fighting, whereby account had to be taken of the Russian behavior and the far-reaching destruction to be expected in consequence. The folder does not contain any order or suggestion which might convict certain groups of the population of activities beyond the needs conditioned by war. This decree, for which the defendant Goering has taken full responsibility, does not furnish any reason for an indictment.

In all this, one must not disregard one thing, this war was of such gravity, such proportions, such duration and totality as the creators of the Hague convention certainly never had or could have had the remotest idea. It was a war in which the nations fought for their existence or destruction. It was a war in which all values have changed. Thus the defendant had the right feeling when he declared: "After all there is no legality in the fight for life or death."

From the standpoint of necessity a justification can also be found for the deportation of workers from occupied territory to Germany. In his testimony the defendant stated in detail all the reasons which in his opinion made this measure necessary.

For the rest the defense counsel for defendant Sauckel, Herr Dr. Servatius, will review these matters in detail.

Looting of Art Treasures

As to the reproach of art treasure looting the defendant has made an inclusive statement of facts, which will be referred to in order to justify his conduct. In addition it will be observed that Reichmarshal Goering was not directly engaged in the safeguarding of art treasures in Poland.

Not one of these art treasures did he take for his own collection. In this respect the defendant cannot be incriminated in any way. By order of the Fuehrer works of art in France which were owned by Jews were temporarily confiscated for the benefit of the Reich. They were considered as unclaimed property because their owners had left the country.

Of these confiscated objects, with the express approval of the Fuehrer, Goering received but a small part, and not for himself personally, but for the gallery he had planned, and in which he also intended to incorporate the works of art already in his possession.

He wished to acquire these objects at a price established by French art experts, and the proceeds were to be distributed among the dependents of French war victims.

The juridical situation was therefore as follows: The objects were confiscated by decree of the Fuehrer for the benefit of the German Reich. By this confiscation the former owners lost their right to possession and it was transferred to the Reich. The objects which were left him Goering acquired from the Reich, which was their present owner.

The Reich obviously saw in this a step which, though it was proved premature by the course of events, was to forestall the peace treaty to be concluded at the end of the hostilities when the final accounts would be made. This is similar to the confiscations and seizures of property carried out at present in Germany in view of the ultimate peace treaty.

Therefore the question remains open whether the Reich Government was juridically entitled to confiscate the goods and to become their owner.

A solution to the question is no longer necessary, because Goering acted in good faith in the matter of this acquisition; in his testimony he emphasized his belief that he was entitled to acquire these things as they had been previously confiscated by the Fuehrer.

In consideration of these facts there cannot be any question of looting.

Certainly there could be no objection to the purchasing of articles which occurred during normal business transaction, and which the defendant had been offered spontaneously and the sellers were only too eager to dispose of in view of the good price they received for them.

It is the same case with objects which the defendant had acquired through a voluntary exchange in which the second party to the contract enjoyed the same rights as himself.

Airmen

I will now consider the accusation of the shooting of 50 officers of the British Air Force after their escape from the prisoner of war camp Sagan.

The act of prosecution (page 33 of the German translation) reads as follows:

In March 1944, 50 officers of the RAF, who had escaped from Stalag-Luft III in Sagan, were murdered after their recapture. According to a later declaration of the prosecution the circumstances were as follows:

During the night of 24-25 March 1944, 76 officers of the RAF escaped from the prisoner of war camp Stalag-Luft III in Sagan. Fifty of these officers were shot by the Security Service after they had been recaptured.

An investigation must be made on the following points: Who gave the order for the shooting? Did Reichmarshal Goering play any part in this occurrence? Did he actually take part in the drafting of the order to shoot these 50 airmen? Did he agree to the measure although it was a grave offense against paragraph 50 of the Geneva Protocol dealing with the treatment of Prisoners of War?

The prosecution states that the defendant Goering collaborated in the drafting of this order. It refers among other things to the reports which Major General Westhoff and criminal counsellor Wielen drew up while they were in British custody. But the interrogation of these witnesses in court, as requested by the defense counsel, as well as the bringing forward of further evidence which has been so carefully accomplished before the Tribunal has shown in the meantime that the previous statements of Westhoff and Wielen were incorrect and only in respect of Goering's presence at the camp conference and his knowledge of the shooting order were only based on suppositions, which had their roots in the fact that it was a question of a Prisoner of War camp for airmen. The result of the evidence was as follows:

At this camp conference of 25 March 1944 Himmler reported the escape of the 76 officers to the Fuehrer. For this Hitler severely reprimanded General Field Marshal Keitel; he considered the event to be of great danger to public security, since the escaped officers might assist the 6 million foreigners in Germany in the organization of an armed revolt. Then Hitler gave the order: "The prisoners remain with Himmler".

Keitel definitely refused the retransfer to Himmler of the 15 officers who had already been recaptured by the armed forces and returned to the camp, and these officers remained unharmed.

At this camp conference in the presence of Keitel, Hitler did not order the shooting of the prisoners who were to remain in Himmler's hands. Neither Keitel nor Jodl expected such measures. Jodl expected the escaped prisoners to be sent to a concentration camp for some time. As Keitel and Jodl agree in their testimonies Reichmarshal Goering did not attend this meeting. Therefore it cannot possibly be correct that General Field Marshal Keitel declared in a conference with General Westhoff he had been reprimanded by Goering at the camp meeting on account of the prisoners escape.

General Koller has testified that General Korten assured him over the telephone round about the end of March or beginning of April 1944, that the Luftwaffe, namely the Reichmarshal and Korten himself, were not involved in the order and had only been informed of it later. Furthermore Koller certified that the Reichmarshal was extremely angry about the shooting.

These statements are completely in accordance with the declarations of Reichmarshal Goering who was on a vacation at the time of the conference with Hitler. The fact of the escape reached him only through a telephone report of his adjutant. It was only after his return from vacation some time around Easter 1944 that he learned, through his chief of general staff, Korten, about the fact that shootings of prisoners had taken place. Reichmarshal Goering was much upset about this last report because he had only condemned the deed in itself but moreover feared reprisals for his own airmen.

Upon inquiry, Himmler then confirmed the executions to Reichmarshal Goering with the justification that an order to that effect had been issued to him by Hitler.

It is made clear by this conversation how the execution was possible and how its perpetration could remain concealed from the Wehrmacht. In the absence of Keitel and Jodl, Hitler issued the order to Himmler to carry out the execution and Himmler then, unknown to the Wehrmacht, immediately passed on the order to the Reich Security Headquarters, i.e., according to Kaltenbrunner's statement, to Mueller or, as the case may be, to Nebe.

Not only did Reichmarshal Goering severely upbraid Himmler because the latter had executed the order without informing Goering but he raised the most vigorous protest against this measure in a subsequent interview with Hitler. This resulted in a violent argument between Goering and Hitler.

Because Goering strongly condemned such proceedings, he requested shortly afterwards that the prisoner camps be taken in charge by the OKW. On being questioned, Field Marshal Keitel confirmed, as witness, that a few weeks after the occurrence, he received a letter from the general quartermaster of the Luftwaffe, in which the Luftwaffe requested the taking over of its camps by the OKW.

This result of the examination of evidence, which, as already emphasized, straightens out the initial statements of the witnesses Westhoff and Wielen, which are contradictory in many respects, as well as Keitel's earlier declaration of the 10 November 1945, also, vindicates the conclusion that Reichmarshal Goering was in no way involved in this affair, that he condemned it most severely when he was informed of it and that he therefore cannot be called upon to answer for this extremely regrettable and reprehensible order which it was not within his power to prevent.

Lynch Justice

The prosecution has gone on to the question of "lynch justice" which was practiced by the German population in individual cases in 1944 when enemy airmen had been shot down. For these occurrences, the defendants, especially Reichmarshal Goering, are held responsible. The charge that defendant Goering or the Wehrmacht are in any way involved in this action, that they issued orders or instructions to this effect or even merely approved the action is seen to be entirely unjustifiable. The examination of evidence here has thoroughly cleared up the matter in favor of the defendant.

Witness Colonel Bernd *v.* Brauchitsch pointed out during his interrogation on the 12 March 1946 (page 5680 of the German minutes) that in Spring 1944 there was a sudden increase in the losses among the civilian population through machine-gun attacks by enemy airmen.

To support their charges against Reichmarshal Goering, the prosecution invokes first of all a protocol of 19 May 1944 (L–166) concerning the so-called "Hunting Conference" which was held on the 15 and 16 May under the presidency of the defendant.

Numbered as item 20 of this script is a statement of the defendant saying he would suggest to the Fuehrer that terrorist enemy airmen be immediately shot on the place of their offense. The defendant most definitely denies having made any pronouncement to this effect and justly points to the following circumstances which belie any such statement:

The session stretched over two days. Numerous technical and organizational questions were discussed. The question touched upon in item 20 had nothing whatever to do with the agenda for the rest of the session, least of all with the purpose of the session.

The remark has its place among themes which deal with matters of an entirely different kind and has no point in this conjuncture.

Besides, Goering, had he approved and wished it, could himself have immediately issued such an order without further ado, as everyone knew the Fuehrer was well disposed to him.

The decisive fact is that the statement is in the sharpest contradiction with the fundamental attitude of the defendant. He always stood for the view that the enemy airman who is shot down is his comrade and must be treated as a comrade, a fact which I have already remarked upon in another connection. Moreover, in the question as to how terror airmen are to be treated, he has defended his position with all frankness against the conception upheld by Hitler and has made no secret to Hitler of his entirely different opinion.

In view of this unwavering attitude and its resulting policy, it is utterly out of the question that he should suddenly have urged Hitler to issue the above-mentioned order against the terror airmen—an order which he opposed with all his might and the execution of which he sought to prevent by every means as soon as it came to his knowledge. And he did succeed in fact in preventing the execution of this order.

If the terror airmen were actually discussed at the session, this discussion could only have occurred with the implication that the Fuehrer suggested such a measure.

With reference to the minutes, the following fundamental remarks must be added:

We have here the combined notes of a young officer, stretching over a two-day session during which there has been a great deal of talking and cross-talking. Experience made in many other cases has shown that such recordings are often very unreliable and have even at times reproduced the subject of the discussion in an utterly perverted form, precisely because the author of the script, especially when several participants were present and were talking at random, could not follow the course of the discussion and consequently did not reproduce the substance of it accurately, especially when, in addition to this, he was relayed by other people. This explains many factual errors as well as the inadequacy and unreliability of such records.

The minutes were never submitted to the defendant. He has not therefore been able to verify their contents nor to correct their errors.

Records of this sort, which are built up in the way described above and which are not submitted to the perusal and approval of the parties concerned are worthless in the production of evidence.

They cannot in themselves alone serve as an adequate means of proof either to charge or convict the defendant. They can therefore only be made use of to the detriment of the parties implicated when the contended facts are confirmed by other material brought for evidence from sources external to these minutes. In the present case, there is no confirmation from other evidence that Goering actually made the statement contained in item 20 or made a request to Hitler to that effect.

The note dated 21 May (731–PS) fails to provide support for the claim. The note "General Korten teilt nach Vortrag des Reichsmarschalls mit" cannot, in view of the defendant's undisproved statement, possibly mean that the Reichsmarshal delivered an address on this matter in Hitler's quarters, but solely that Korten reported on this subject to the Reichsmarshal and that Korten informed the Reichsmarshal of Hitler's order.

The rest of the examination of evidence has made it clear beyond doubt that Goering was against a special treatment of enemy terror airmen who had been shot down, and that he opposed Hitler's order.

These attacks by enemy airmen were directed, within Germany, against civilians working in the fields, minor railway lines without any military importance, and against pedestrians and cyclists.

This constituted a gross violation of the Hague Rules of Land Warfare, according to which any combat act against the noncombatant population of the country is prohibited, and any attack or shelling of open cities, villages, residences, or buildings is forbidden.

According to the opinion of the witness *v.* Brauchitsch this behavior which quite evidently violated international law caused Hitler to order measures against these aviators themselves, besides defensive measures. Relative to this Hitler advocated—as far as it is known to the witness—the most severe measures; lynching justice was to be given the right of way.

This stand of Hitler toward the violations of international law by enemy aviators, however, did not meet with the approval of the Armed Forces, especially not with that of Reichsmarshal Goering and that of his Chief of Staff (Generalstabschef), General Korten. Both of them did condemn to the utmost the attacks of enemy aviators which were exclusively directed against the defenseless civilian population. However, they nevertheless opposed the handing over of defenseless shot down aviators to the aroused mob for the carrying out of lynching justice, and they did not think these measures an appropriate means of combating this conduct which was in violation of international law.

The witness General Koller expressed himself to the same effect.

Early in June 1944 General Korten informed this witness of the fact that the Fuehrer intended to decree an order to the effect that terror aviators were to be surrendered to public fury.

In the course of repeated conversations the witness Koller and General Korten arrived at the opinion that the conception of the Fuehrer was to be rejected. They did consider the direct attacks of enemy low-flying planes on individual civilian persons, women and children, concentration of civilian persons, school-classes and kindergartens out on walks, farmers at work in the fields, as well as attacks on public passenger trains and hospitals, as ruthless; however, neither did the two see a passable road or a solution of the difficult problem in the Fuehrer's order. They were of the opinion that such an order was contrary to basic military conceptions, the articles of war, and to international law, and that it would give cause to numerous evils through which also other enemy as well as our own crews would have to come to harm. And finally such an order could exercise also in its effects, a harmful influence on the morale of our own crews.

All these reasons caused the Armed Forces to reject Hitler's demand, and the attempts of the Armed Forces were now directed toward preventing the disapproved conception of Hitler. The witness *v.* Brauchitsch therefore credibly states that the Armed Forces now looked for a way out, which way was seen in the fact that the higher command levels were deceived by measures which were not actually carried out.

The witness Brauchitsch was ordered by Reichmarshal Goering to define in discussions with the OKW the concept of terror aviators. In the subsequent discussions and exchange of correspondence those cases were mentioned which represented violations of international law and which were to be considered criminal acts. By this definition of the concept a lynching justice was to be prevented. The exchange of correspondence which lasted for a longer period of time showed the tendency of the agency to prolong the matter as much as possible.

The witness Koller is justified in emphasizing that this exchange of correspondence shows all signs of a "delaying action to gain time," i.e., those concerned either did not want any decision, or they wanted to postpone it as long as only possible. In particular the margin note on document D–785 (Exhibit GB 318) entitled "No answer received from Commander in Chief of the Air Force", allows for the conclusion that the Reichmarshal purposely wanted to prolong the matter. Furthermore Reichmarshal Goering, as can be seen from the letter of 19 June 1944 (D–779) maintained the opinion, that in every instance he considered legal procedures also against terror aviators as definitely necessary. If it is stated in a subsequent document of 26 June 1944 "The Reichmarshal agrees with the announced formulation defining the concept of terror aviators and with the suggested procedure", then the agreement with the procedure refers exclusively to the suggested procedure of publication suggested in the final paragraph of the letter of 15 June 1944, for which Reichmarshal Goering's approval had been requested. That the Reichmarshal until the end of the war maintained the old aviator standpoint, according to which enemy aviators as soon as they have been shot down are to be considered and treated as comrades, was not only expressly deposed by the witness General Field Marshal Milch, but is also emphasized by General Koller with the following words: "Undamaged by occasional expressions of displeasure the attitude of the Reichmarshal always remained correct and valiant in accordance with his frequently emphasized flying tradition which he had retained from the First World War. In understandable anger about great difficulties in the air defense, pressed by the Fuehrer, he perhaps for once used harsher words, which were quickly forgotten", and the witness does not know of any case "in which such a spontaneous displeasure caused the Reichmarshal to take incorrect or harsh measures against members of the enemy air forces".

The behavior of the air force as a whole was also correct and humane at all times. To fight chivalrously was a matter of honor with the German aviators. The Air Force as well as the defendant Goering retained this point of view, although as Koller expressly mentioned, the flying personnel felt extremely bitter over the strafing attacks on German crews suspended on parachutes, and individual hotheads spoke of equal measures as reprisals.

The best testimonial for the exemplary comradely behavior of the Air Force even toward an enemy, who did not observe the rules of warfare, can be clearly seen from the description of the witness Koller about the establishment of a sea emergency service of the Air Force, which brought aid to Germans as well as the enemy in an equal measure and which carried on despite enemy attacks in violation of international law, with its attempt to provide aid for both friend and enemy in need. Accordingly it must be determined:

The Armed Forces and the defendant Goering have rejected the lynching justice as well as all procedure against the terror aviators not in accordance with legal regulations and have not issued any orders to troops under his command; in no case have enemy aviators been shot by the Air Force or by the Army, or handed over to the Security Service (SD).

Gestapo—KZ

The prosecution accuses the defendant Goering of having established a reign of terror in Prussia immediately after 30 January 1933 in his capacity as Prussian Minister of the Interior and soon afterwards as Prussian Minister President in order to suppress all opposition against the Nazi program.

In order to carry out his plans he had used the Prussia police, which he had ordered as early as in February 1933 to protect the new government by proceeding ruthlessly against all political opponents without consideration of the consequences.

In order to safeguard the power, he had created the feared Secret State Police and established concentration camps as early as spring of 1933.

To these accusations the following is to be said:

It was natural and cannot serve as an accusation against the defendant, and it would rather have been a severe violation of the duties intrusted to the defendant, if he had not devoted himself with all his strength to the safeguarding of the new government and taken every imaginable precaution in order to make any attack on this new government impossible from the very beginning. In order to achieve this goal first of all the police institutions had to be considered.

It only remains to be examined, if the means, whose application the defendant considered necessary, were objectionable.

The question is to be answered in the negative because of the following considerations:

In every state the police is the inner-political instrument of power; in every state it has the task to support the government, to protect it in all directions and to render the disturber of the peace and the violator of the law harmless by force of arms, if necessary. The defendant transferred the same tasks to the police under his direction, whom he ordered in the speech mentioned by the Prosecution to act energetically and to fulfill their duties conscientiously. To what extent such an appeal for the performance of duty should not be permissible remains incomprehensible.

In his interrogation the defendant Goering described expressly for what reasons and along which lines he considered a reorganization of the police as necessary and carried it out. Against these directives no objections whatever can be raised.

I should like to point out in this connection that according to the recognized rules of international law a sovereign state has the right to regulate its internal affairs as it deems fit to do.

The reform of the police is an exclusively internal affair. The violation of rules, generally recognized by international law is, therefore, out of question in this respect.

A political police was in existence before the assumption of power as well. Before the 30th of January 1933, it was called Department Ia, which among other things had to watch and to fight political adversaries, National Socialists and Communists in particular. Such a police dealing with the same tasks was also needed after the assumption of power in order to protect the new state against attacks, which threatened it in particular from the very strong Communist Party.

In order to make clear that this department of the police was charged exclusively with safeguarding the state against enemies of the state it was named Secret State Police.

As long as the defendant Goering was head of the police this was, in fact, only the case until 1934 as then Himmler was put in charge. He strictly confined himself to the tasks prescribed to him, did not transgress his authority, and no misuse of power occurred. The evidence produced has shown nothing against the defendant Goering for this period of time. Should, at a later date, the Secret State Police have transgressed their authority and should have committed illegal acts the defendant had no knowledge of them and did not approve of it. For mistakes and crimes committed by his successors which remained unknown to him, he cannot be held responsible.

There appeared in court a witness whose testimony was very incriminating for the defendant: Dr. Gisevius.

The defendant refuses on principle to deal with the statement of this witness. He only wants to point out that this statement is untrue in all points incriminating the defendant.

The demonstrative force of this statement depends on whether this witness is considered to be trustworthy or not.

My fellow defense counsel, Dr. Nelte, has agreed to deal with this question extensively, so that in order to avoid repetitious statements I shall refrain from further declarations.

Of course, the assumption of power by the National Socialist party met with resistance, and particularly the leftist parties were anything but satisfied with the situation thus created. The opponents were by no means weak, neither numerically nor in the means at their disposal. The new rulers were, therefore, afraid of serious dangers to their power, if they let the opposition parties continue their activity without hindrance; they had accordingly to take preventive measures against such dangers in good time. In order to stabilize their own power and to nip in the bud any possible source of unrest, the defendant Goering considered it necessary for reasons of state to settle at one blow both leaders and officials of the communist party and its organizations. The defendant has spoken at length about his reasons for such acts. For the removal of danger and to insure the safety of the state, the measures taken by the defendant were, for the government, a necessity caused by the unsettled nature of the times. As it was a preventive measure, it was not necessary for a provisional arrest that a criminal act against the government had already been committed or was, obviously, on the verge of being committed. The fact of membership in itself and previous activity in the said party was enough for arrest, as it was a political act of self-protection on the part of the government.

Such considerations led, very soon after the assumption of power, to the establishment of concentration camps, of which there were 2 at the time when defendant Goering was at the head of the police. The aim of such camps was to hold provisionally politically unreliable persons, who might be of danger to the new state, until they either had adapted themselves to the new political conditions or until the power of the state had become so great that such persons could no longer endanger it.

No different were the considerations which influenced the defendant Goering when he created concentration camps in 1933 and issued laws concerning the Secret State Police (Geheime Staatspolizei). These were intended to be as he conceived them, a means of cleansing and strengthening the young community of the people. He did not aim at a definite annihilation of political enemies but after a certain period of education interceded generously for liberations, and discharged at Christmas 1933, about 5,000, and in September 1934, 2,000 prisoners.

He vigorously counteracted inevitable abuses and errors which he openly admitted in the book he published in 1934, intended for the British public: "The Building of a Nation." He let, for example, the Communist leader Thaelmann personally report to him about his complaints in the concentration camp and took care to remove their cause. He dissolved the so-called "wild-camps" of Stettin and Breslau, punished the Gauleiter of Pomerania who had organized this camp without his knowledge and against his will, and had those responsible for these wild concentration camps brought up on trial for their infringements of the regulations.

This attitude of the defendant Goering denotes that he never intended the actual physical annihilation of the prisoners. If the prosecution establishes that this was all in execution of a conspiracy which aimed at committing crimes against humanity, such an interpretation has no bearing on the reality of political life in the years in question. Such a conspiracy did not exist, nor was it the intention of the defendant to commit crimes against the principles of humanity nor has he committed any such crimes. As one of the political trustees of the German government, he felt himself bound to safeguard it against dangerous disturbers of the peace and to contribute accordingly to the permanence of the National Socialist way of life. Far from looking upon such measures as criminal, he considered them, on the contrary, to be the inevitable means of consolidating the political order as a basis of all law.

In 1936, the leadership of the police and, therefore, the management of the concentration camps, passed from the defendant to the Reichsfuehrer S.S. Heinrich Himmler. The defendant cannot be held responsible for the subsequent evolution of the concentration camps; for the fact that they became, especially after the outbreak of the war, more and more gruesome places of torture and death, and led—partly intentionally, partly through the chaotic war conditions—to the death of countless people, so that finally, in the last days before the breakdown of Germany, and through errors in organization they turned into one vast graveyard.

Certainly he knew that there still were concentration camps, also that the number of inmates had risen because of war tensions, and that they also contained foreigners because of the expansion of the war machine over all of Europe, but the horrible occurrences as they have been disclosed in this trial were unknown to him. He knew nothing of the irresponsible experiments which were being carried out on inmates because of misinterpretation of true scientific spirit. The testimony of witness Field Marshal Milch has shown that the Luftwaffe was not interested in these experiments, and that the defendant personally did not learn anything specific at all about this matter.

By no means did the establishment of concentration camps as such have anything to do with the later extermination of Jews which apparently originated in Heydrich's and Himmler's brains and was kept secret in a masterly manner, and was disclosed after the collapse as the horror of Auschwitz and Maidanek.

This brings me to the Jewish question. The defendant Goering has explained in detail his views on the Jewish question during his interrogation as witness; furthermore, he has shown in all their details the reasons which influenced the National Socialist party and after the seizure of power, the state to take a hostile attitude toward Jews.

The defendant is reproached for having promulgated the Nurnberg laws in the year 1935 which were intended to keep the race pure, and that in his capacity as Commissioner for the Four Year

Plan he issued decrees during the years 1938 and 1939 which had as their aim the exclusion of Jews from economic life.

Furthermore, he is blamed for a number of other laws which meant a one-sided and serious intervention into the legal sphere of Jews. The legal reason for this reproach which is devoid of any foundation is obscure.

For here it is a question of a purely domestic problem—namely the regulation of the legal position of one's own subjects; according to internationally recognized legal opinion at that time, the German Reich as a sovereign state could freely settle such a problem.

Even if these encroachments were harsh and the limitations of citizenship rights were extremely severe, they nevertheless in no way comprise an offense against humanity.

Such legal provisions which limit a certain race or a certain circle of citizens in their legal position have also been made by other states without offense being taken at such measure or without other states considering themselves induced to intervene. Reichmarshal Goering always refused any illegal or violent action against Jews. This is clearly shown by his attitude toward the action against Jews during the night of 9 to 10 November 1938, instigated by Goebbels, of which he was informed only after the deed had been done, and which he condemned most severely. In this respect, he raised serious objections with Goebbels and Hitler. On this matter, the precise statements of witnesses Bodenschatz and Koerner are available. The testimony of Dr. Uiberreither shows how greatly Goering disapproved of this action. According to the former, the defendant summoned all Gauleiters to Berlin several weeks after this incident and in an address censured the violent action with the sharp words that this action did not correspond to the dignity of the state and that it had caused serious damage to German prestige abroad. That the defendant was no race fanatic became generally known by his expression: "I decide who is a Jew." It has been established sufficiently that he aided many Jews.

He was informed only at the end of the war about biological extermination of the Jews. He never approved such a measure and opposed it with all his might for he had too much political insight not to recognize the tremendous and at the same time senseless dangers which would perforce result for the German people from such a brutal and detestable extermination drive.

Goering had already proved by the above mentioned speech to the Gauleiters that he did not wish to ruin himself in the eyes of the world public and world opinion because of the treatment of Jews.

It is therefore out of the question for Goering to have agreed to such an undertaking or for him to have participated in it in any manner. It is understandable if it is held against the defendant that he should have been informed about such horrible measures as the second man in the state.

Furthermore, it is no wonder if such statements of the defendant that he knew nothing of these atrocities are met with a certain amount of mistrust. Despite such doubts, however, the defendant insists that no information about such acts ever reached him. This ignorance of the defendant, which can be completely understood only by one familiar with German conditions, may be explained from the fact, and this is the sole solution of the riddle, that Himmler, as was also emphasized by General Jodl during his interrogation, knew most masterfully how to keep his actions secret, to obliterate all traces of his atrocities, and to deceive the surrounding world and even his and Hitler's closer entourage.

In this connection, I also refer to the testimony of witness Hoess who confirms Himmler's instruction concerning absolute secrecy toward everyone.

The question may come up here: Did not the legal obligation exist for the defendant to instigate investigations about this matter and to get reliable information as to the true whereabouts of supposedly evacuated Jews, and as to their fate? And what legal consequence results if he carelessly refrained from such investigations and thus carelessly violated his legal obligation to act incumbent on him by virtue of his position? The decision of this extremely complicated question of law and fact may be left undecided because Goering even as the second man in the state did not have the power to prevent such measures if they were carried out by Himmler and were ordered or at any rate approved by Hitler.

Conclusion

If we now review the personality and life of the defendant Goering the following viewpoints have to be considered for the appreciation of his actions:

Of good educational and characterological background he received his decisive impressions as a young officer and combat airman during World War I during which he proved an outstanding man and was awarded the highest award for bravery the order of "Pour le merite". He experienced the collapse of the German war effort as—as it was seen by him—a consequence of German treachery from inside.

After the rule of the Kaiser (Kaiserreich) had been overthrown, the German people wanted to give themselves a new constitution on a democratic basis and then hoped to be able to work their way up again by industry and perseverance. In this, the confidence in the far-sightedness of the victorious powers of that time, especially in the 14 points of Wilson, played a great part.

But when the treaty of Versailles utterly frustrated these hopes, the Weimar democracy came into a serious crisis from which it was not to recover any more. The latter together with world economic crisis which was added later on formed the prerequisite which could not be ignored for the fact that Hitler was able to seize power.

At first, the "fight against Versailles" made his rise as a party leader possible. Goering as witness described how he agreed with Hitler during their first meeting in the conviction that nothing could be achieved by paper protests.

The powerlessness of the German democracy became apparent now to the entire world. Goering as well as Hitler were convinced that Germany infallibly would become a victim of Bolshevism if it was not possible to awaken against the latter sufficient defensive strength by the reestablishment of German self-confidence at home. It was understood that they also had to stand up with rigor against the Versailles powers. But in this, Hitler started out without question from the fact that Germany belonged basically to the West, culturally, economically, and even politically. He believed that the Bolshevist danger, at first directed against Germany, would afterwards also threaten the Western countries. He therefore, was of the opinion that he would be able to find gradually also their recognition and support if he took up the ideological struggle against the East.

From this basic attitude alone is it possible to explain his entire policy until the actual collapse. May one today rightly condemn it as having failed from the beginning; one must not forget that, at first, many things in the development clearly seemed to justify it. Thus it can be explained how Hitler succeeded in winning over an increasing part of the Germans to his following.

Goering sincerely believed that salvation could only come through Hitler. He recognized in him the born natural leader who understood to influence the masses and to guide them and who, driven by a fascinating strong will, could not be frightened by any obstacle. He realized that under a democratic constitution only such a man of certainly demoniacal-demagogic talent could survive. And therefore he joined him.

Because Goering was an honest German, only inspired by love for his fatherland, he did not think of using Hitler only as a tool for his new rise to power. He rather took it upon himself from the beginning to recognize in him the sole man vested with authority, namely the "Fuehrer", and to be satisfied with a subordinate role. He the famous air force captain and "pour le merite" did not hesitate to swear to Hitler, then still an unknown man the oath of allegiance, an oath which was to be valid for his entire life and was valid.

It is tragic that a fight which Goering waged together with Hitler could be so completely misunderstood as to lead to accuse him of a conspiracy, entered into from the beginning for the purpose of committing crimes. His aim was at first directed to free Germany from the shackles of the treaty of Versailles. Although the Weimar government has made repeated attempts to achieve a liberation from the especially burdening obligations of this treaty, Germany was not successful in her endeavoring for a revision. One made no progress by negotiations.

Did not international law appear to be an instrument in the hands of the victors of Versailles to keep Germany down permanently? Was it not true in the world that might went before right and would the Germans only achieve then something when they got up the courage to hit on the table forcibly with their fists?

Such considerations appear absolutely understandable from the situation of that time. To construe from them even a proof for the conspiracy as stated by the prosecution would mean a complete misunderstanding. Actually, the development after 1933 appears to justify Hitler completely. He easily achieved with his methods many more times than what, if given freely, would have kept the Weimar government in power.

The German people could only recognize in the willingness of the foreign countries not only to conclude treaties with Hitler—such as the naval agreement of 1935 and the Munich pact of September 1938—but also to participate in the party rallies to the end, the fact that Hitler had chosen the correct road for reaching international understanding. This impression and this judgment were also absolutely correct until the fall of 1938. If Hitler would afterwards have observed loyally the Munich agreement, then he would probably have taken the arguments out of the hand of the "stop" policy carried out against him. Not only would the peace have been kept, but Hitler could also have harvested the fruits of his domestic and foreign policy, carried out until then and recognized by all powers.

Basically, one argues today only whether the development since then with its catastrophic consequences are to be charged solely to him or who has to share the responsibility. All Germans who followed Hitler at any time and in any way, are accused. For, as it is said by the prosecution, above all those who did not trust him from the beginning with anything good and who deprived his government from the beginning already of legality: "That could be seen from the beginning that it would end as it did!" Thus, everyone who supported him at any time and in any way is therefore also guilty.

This accusation must be objected to because it constructs looking backwards from this sad result an obligation which must annihilate all belief not only in freedom but also in the insight of man. Naturally Hitler did not desire the end as it now happened either. He has often enough announced publicly that he was not out for the laurels of war, but that he would like to devote the rest of his life to peaceful reconstruction. Looking from a truly objective vantage point, one can only accuse that he did not limit his goals when he could no longer believe in their achievement by peaceful and human means.

If under such means only those are understood which are to renounce force generally in any form, then he need not have gone his own way and have looked for a new solution. A certain play with force as long as it does not degenerate will therefore have to be left at his disposal. Where the degeneration began—because of the lack of other points of reference—can be surmised only from the results, which he actually caused with his policy. Most certainly he did not foresee and intend the bad results. However, it will have to be considered as his guilt, that he would never let himself be taught by his failures, but only let himself be led to increasingly exorbitant acts. How much of this guilt, however, can and may be charged also to his followers?

Whoever did not reject Hitler's methods and thereby him personally from the very beginning as illegitimate found difficulty in recognizing where Hitler's political aims came to an end, to give justifying reasons for his measures, and where afterwards his politics became a crime. In this respect the border from the standpoint of purely German law sentiments surely ran along a line considerably different from that of other nations or mankind in particular. Because the latter for example were hardly interested in the maintenance of the Weimar constitution and the basic rights granted by it to the individual German, its violation therefore up to the Second World War has never caused other states to intervene with the German government. On the other hand, once the war had broken out, the Germans were forced to give precedence to German interests over their sympathy with members of other, especially the enemy states. Each of them believed to be doing enough, if he took care in his field, that unnecessary hardships were avoided. To rebel against orders which came from the highest German command would not only have appeared completely senseless and hopeless, but until shortly, until the bitter end, it would also have been a violation of German legality, and thereby a criminal injustice. Accusations that no rebellion was undertaken can therefore be raised only if the breach of formal legality without consideration of the immediate practical effect only on behalf of the principle, ergo the attitude of a revolutionary, could be defined as a legal obligation.

The consequences of such a conception are so far from the point that it cannot be mentioned seriously at all. Because the hitherto existing international law was primarily based on the unlimited sovereignty of the states, no state was willing to submit in vital decisive questions to the judgment of others, however great a majority it may be or however independent a tribunal it may be. And now every individual citizen of such a sovereign state was supposed to have not only the right in relation to the other nations or humanity, but even the duty to rebel against the legal power machine of his own state, because the latter violated human rights and the rights of humanity. Such an imposition, made retroactively, pronounces its own sentence. It would place the autonomy of the individual above state sovereignty. Thereby the strength of the individual person would not only be innumerably overestimated, but this would have to lead to the breaking of the last ties of traditional order, to anarchy. Compared to such a manner of thinking Goering almost represents the exact opposite pole. As others went into the war, in order to fight war as such, so he became a revolutionary in order to give back honor to the concept of loyalty. Thus having once cast his lot with the Fuehrer he has stood by his side even after he had already lost the latter's confidence for a long time, yes, even after he had been sentenced to death by Hitler. He remained loyal until today in spite of everything by confirming to excuse Hitler before himself. To many this may appear incomprehensible, and many may see more weakness than strength in it. In this loyalty, however, the man reveals his whole nature. Goering has been described in the press as a late Renaissance type; and there is something in this. Although of high intelligence, he has allowed himself to be guided in his actions less by considerations of common sense than by the feelings of his impetuous heart. Such a man expresses himself of necessity in a way that is primarily subjective. He not only sees his surroundings and other people impassionately as immovable quantities he has to reckon with, but he rather and above all is sensitive to the effect they have on him and how they call for his approval or disapproval, so that he finally makes his personal reaction to them the basis of his judgment as a whole.

In this, as can be seen from the statements of the General Supreme Staff Judge Dr. Lehmann, he always showed himself at pains to remain just and to lend an ear to considerations of sentiment. He always kept himself free from doctrinal prejudices. As a soldier and expert he always endeavored to hit on the right factor in the individual case. His judicial decisions, also his social attitude which General Bodenschatz testified to among other things, show his serious moral feeling of responsibility. His attitude towards all criminal acts directed against the honor of women are proof of his chivalry. But he takes no dogmas for his standards in this, only the spontaneous judgment of his feelings, not only the intellect, therefore, but life. From life he derives his ideas and the values which determine his actions.

Therefore the Fuehrer and the oath of loyalty he had taken meant everything to him and was the substance of his life. Ambassador Henderson had already judged Goering correctly, when he wrote about him: "He was the perfect servant of his master, and I have never seen greater loyalty.and devotion than he maintains toward Hitler. He was recognized as the second power in the country, and always gave me to understand that he was Hitler's natural successor as leader. Men in secondary places often tend to emphasize their own importance. In all the open discussions in which I engaged with Goering, he never spoke of himself or the great part which he had played in the Nazi revolution; Hitler had done everything, all confidence was confidence in Hitler, every decision was Hitler's and he himself was nothing." This judgment still applies today. But his loyalty became his disaster, and the world for him sank into ruins. He certainly recognized many a mistake of the past, but he never showed the regret, which many would like to see with him. He thereby remains true to himself, as well. With this the picture of his character ends. In a period which is still threatened by chaos and which is again searching for a firm foundation for life, the positive value of such loyalty too should not be ignored.

2. FINAL PLEA by Hermann Wilhelm Goering

The Prosecution in its final speeches have treated the defendants and the presentation of evidence as completely worthless. The statements made under oath; the statements made by the defendants were assumed to be absolutely true, whether they served to support the Prosecution and the documents, but at the same moment, the statements were treated as perjury when the statements refuted the Indictment. That is not a convincing statement for the proceedings and thesis of evidence.

The Prosecution uses the fact that I was the second man in the State as a proof that I should have known everything that happened. But it does not present any documentary or other convincing proof that there, under my oath, I refuted the contents of this knowledge, and therefore, it is only an assertion and an assumption when the Prosecution says, "Who should have known that if not Goering who was the successor of the Fuehrer?"

Repeatedly we have heard here how the most awful crimes were veiled with the most secrecy. But I condemned these terrible mass murders to the utmost, and to show that I am not lacking any misunderstanding in this connection, I wish to state emphatically the following comments once more, quite clearly, before the High Tribunal. Never did I ever decree a murder upon a single individual in any period of any time, but neither did I decree any cruelties at any time while I had the power and the knowledge to prevent them.

The new statements presented by Mr. Dodd in his final statement that I had ordered Heydrich to kill the Jews lacks every proof, and that statement is not true. There is not a single order signed by me or signed in my behalf that enemy fliers should be shot or should be turned over to the SD. And not a single case has been established where units of my airforce have carried out things like that.

The Prosecution has in part submitted documents repeatedly which contain alleged statements, and written down by third and fourth parties without my having seen these statements, in order to correct erroneous statements contained therein and to preclude misunderstanding.

How easy it is, when third parties set down reports, that the sense may be distorted. This fact may be proved also by the stenographic records taken in these proceedings which, in many cases, need correction when they are checked.

The prosecution quotes a period of 25 years and quotes singular statements which were made under completely different circumstances and without any conclusions arising at the time. These statements were made, and now they are used to prove intent and guilt. Sometimes statements can easily be made because of the commitment of the moment and because of the atmosphere that obtains. There is hardly one leading personality on the other side of whom we could not say the same in the course of a quarter of a century, about whom something similar was not set down in word or in writing.

Out of all the happenings of those 25 years, conferences, speeches, laws, and decisions, the prosecution seizes at the consequences and makes a connection according to which everything had been intended and wished that way from the beginning. This is a statement or an opinion which is erroneous and which is entirely devoid of logic, an opinion which will be rectified some day by history, after the proceedings here will arrive at the erroneousness of this assertion.

Mr. Jackson in his final speech referred to the fact that the signatory states are still in a state of war with Germany and, because of unconditional surrender, a state of truce is obtaining now.

However, international law is uniform. The same has to apply for both sides. Therefore, if everything which is happening in Germany because of the occupying powers, that is, if everything is admissible under international law, then before that time, as far as France, Holland, Belgium, Norway, Yugoslavia, and Greece are concerned, Germany found herself in the same position. If today the Geneva Convention, so far as the Germans are concerned, does not have any validity any longer, of today in all parts of Germany industry is being dismantled and other great assets in all spheres can be brought to the other states, if today the monies of millions of Germans are being confiscated and other serious interventions in freedom are taking place, then measures like that taken by Germany in the countries mentioned above cannot have been criminal on the part of Germany as far as other countries are concerned.

Mr. Jackson stated further that you cannot accuse and punish a state but rather, that you have to hold the leaders responsible. One seems to forget that Germany was a sovereign state, that Germany had a sovereign right, and that her legislation for the German people was not subject to the jurisdiction of foreign countries. No state ever, through a notification, called the attention of the Reich in time to the fact that the activity towards National Socialism would be made subject to punishment and persecution. To the contrary, if now individual persons, first of all—we, the fuehrers—are being called to account and are to be sentenced, very well. But, at the same time, you cannot punish the German people as well. The German people confided their trust in the Fuehrer and, in his authoritarian government, had no influence on happenings. Without knowledge of the grave crimes which we have learned of today, the people, loyal, ready to sacrifice, courageously endured the struggle for existence, the struggle to the death.

The German people are free of guilt.

I did not want a war, nor did I bring it about. I have done everything to prevent it through negotiations. After it had broken out, I did everything to assure victory. Since the three greatest powers on earth, together with other nations, fought against us, finally we were conquered by tremendous enemy superiority.

I am standing back of the things that I have done, but I condemn most emphatically and reject most emphatically that my actions were dictated by the will to subjugate foreign peoples through wars, to murder them, to rob them, or to enslave them, or to commit cruelties or crimes.

The only motive which guided me was my ardent love for my people, its fortunes, its freedom, and its life. And for this I call on the Almighty and my German people as a witness.

IV. RUDOLF HESS

1. FINAL ARGUMENT by Dr. Alfred Seidl, Defense Counsel

Mr. President, Honorable Judges! When the German people, having lost the first world war, set out in 1919 to rebuild their existence according to Democratic principles, they found themselves facing difficulties which were caused not merely by the war itself and the material loss resulting therefrom. The defendant Rudolph Hess was among the first comrades in arms around Hitler who time and again reminded the German people of the great dangers which would of necessity arise for Germany's domestic and world economy because of the reparations policy of the victor states of 1919. The consequences of that policy were bound to be all the more devastating for Germany when in 1923 France proceeded to military occupation of the Ruhr territory, the center of Germany's economic power. At that time of economic collapse and complete disarmament of Germany, Hitler made the first attempt through the revolution of 9 November 1923 to seize the power of the State. The defendant Rudolph Hess also took part in the march on the Feldherrn Hall in Munich. Together with Adolph Hitler after conviction by the People's Court, he underwent imprisonment at Landsberg Fortress where Hitler wrote his book "Mein Kampf."

When in 1925 the Party was being established again, Rudolph Hess again was one of the first to resume with Adolph Hitler the struggle for national rebirth of the German people. During the first years after its reestablishment the Party was to begin its very slow climb. Germany's domestic economy had recovered from the worst effects of the Ruhr invasion. The currency had been established and due to very extensive foreign credits it had even been possible to bring about an economic boom.

Very soon, however, it was to be revealed that the economic progress of the years 1927/1928/1929 in reality was but illusory prosperity for which in Germany, at any rate, there was no foundation of a sound and well-balanced national economy. It is true that the economic crisis which began in 1930 was a general crisis in world economy and that the decline which Germany experienced at that time was but a part of the general disintegration in world economy. It is just as certain, however, that this was not a question here simply of a seasonal decline within the capitalist economy, such as had been experienced repeatedly before by individual national economies of countries and by world-commerce, but a case in this instance of structural changes at work which may differ in causes but one of the most important of which undoubtedly was the disturbance in the exchange of products and legal tender caused by the unreasonable reparations policy.

It is just as certain that the consequences of the crisis of the world economy were so devastating in Germany, finally finding expression in an unemployment figure of almost 7 million because the changes brought about in the national economy as a result of reparations payments were particularly far reaching, a fact not of negligible importance. If, consequently, the National Socialist Party won a major electoral victory in the Reichstag elections of 14 September 1930 and entered the new Reichstag with no less than 107 delegates, it is not to be attributed in the last place to the then prevailing economic crisis, to the great unemployment and, indirectly to the economic absurdity of the reparation payments and the refusal of the victorious states to consent to a new deal despite the most urgent warnings. True, the reparation payments stipulated in the Treaty of Versailles and the mode of settlement were amended by the Dawes and Young plans. It is, however, just as true that these amendments came too late and continued to demand payments from Germany to an extent and under conditions which were bound to, and did in fact, lead to an economic catastrophe. In this connection, I must point to the following fact: The Prosecution has produced an extensive amount of documentary evidence in reference to the rise of the NSDAP until its seizure of power. A comparison of the Reichstag mandates in the years ranging from 1930 to 1932 with the unemployment figures for the same period would disclose that the progression of these figures was approximately parallel. The more hopeless the social consequences of unemployment became—and in 1932, no less than 25 million people, including family members, may be estimated to have been hit by the consequences of unemployment—the more impressive became the electoral successes of the National Socialists. I hardly believe that the proof of the existence of a casual relation between the consequences of the reparation policy of the victorious powers of 1919 and the rise of National Socialism can be more convincingly demonstrated. The casual relation may be summed up in a short formula: No Versailles Treaty, no reparations; no reparations, no economic collapse with its particularly catastrophic effects upon Germany, resulting in an unemployment figure of nearly 7 millions; and without this collapse, no seizure of power by the National Socialists. The political and historical responsibility of the authoritative statesmen of the opposite side as resulting from this causal origin is so crystal-clear that further demonstrations of it are superfluous in the framework of this trial.

This formula may appear constructed and could be carried further to prove that it was not the economic emergency and the high unemployment figure alone which induced millions of Germans to vote National Socialist on the 14 September for the first time and which led to the subsequent progress of the Party's rise to power. Nevertheless, these causes were assuredly among the foremost and even the other causes which played a part in the decision of many voters can be traced back in finality to the fatal effects of the Treaty of Versailles and refusal of the victorious powers, especially France, to consent to a revision of the treaty. This applies in the first place to the claim for equality of rights raised by all subsequent democratic governments.

When the German nation had disarmed in fulfillment of the Versailles Treaty it was entitled to expect the victorious powers to disarm also, in accordance with the obligation assumed by them in the Treaty. This was not carried out and there can be no doubt that their denial of the equality of rights as evidenced by their refusal to disarm themselves, figures among the most decisive causes of the rise of National Socialism in the years 1931 and 1932. And if any of Hitler's arguments ever found a response in the German nation, it was that equality of rights could not be denied in the course of time, even after a lost war, to a nation like the German nation with a population of over 75 millions situated in the heart of Europe and with a cultural past of which few other nations can boast. It has already been remarked in this room that a nation which has produced a Luther, a Kant, a Goethe and a Beethoven cannot be indefinitely treated as a minor nation.

Again and again Hitler had occasion to remark upon the fact that the statement of the Weimar Republic left no method untried to arrive at a peaceful revision of the more unbearable clauses of the Treaty of Versailles. For eight years the statesmen of democratic Germany, a Stressmann, and a Bruening, went to Geneva to obtain at last the repeatedly promised equality of rights for Germany and they were repeatedly sent home with empty hands. The dangers produced by this situation could not remain concealed to anyone. In fact, the world was warned by German statesmen, as well as by shrewd politicians of Germany's former enemies. All these warnings were scattered to the winds.

When finally in 1932 the National Socialist Party with 250 seats in the Reichstag had become by far the strongest party in Germany, it could only be a question of time until Hitler and his party would be entrusted with the taking over of government leadership. In the long run this could be avoided all the less since the previous governments of Herr von Papen and General Schleicher had no worthwhile following in the Reichstag at their disposal and exercised their governmental authority exclusively by the means of emergency decrees in accordance with Article 48 of the Weimar

Reich Constitution. When on 30 January 1933 Adolf Hitler was actually appointed Reich Chancellor by Reich President von Hindenburg and was entrusted with the formation of a new cabinet, then this was done altogether according to the clauses of the Reich Constitution.

At the Reichstag election in 1932 the National Socialist Party collected in its favor so many votes as had not been accomplished by any party since the existence of the German Reich. If the leader of this strongest party was intrusted with the formation of the cabinet, then this was, particularly in view of the parliamentary conditions prevailing in Germany at that time, by no means extraordinary and there cannot be the slightest doubt that Hitler and his party came to power legally, that is according to the Constitution. However, it is correct that in the course of the following years the constitutional structure of the German Reich and particularly Hitler's position, underwent a change. There is, however, no evidence on hand that this development as well was not legal.

In order to avoid repetition I am hereby referring to the statements of the witness Dr. Lammers.

In this case it may be left completely undecided whether one wants to declare this development to Hitler's absolutely autocratic rule by the creation of a so-called common law or whether one avails oneself of another theory. For the scope of this trial it seems to me much more decisive that not a single nation with which Germany maintained diplomatic relations raised any objections whatsoever or even drew diplomatic or international legal conclusions neither at the seizure of power nor on the occasion of the transformation of the constitutional structure carried on openly before the entire world. Neither at the seizure of power nor at any later period was the question of diplomatic and international legal recognition of the National Socialist State in doubt.

In addition, may it merely be pointed out that the law, which in the following period was to be of the greatest importance for the relationship between citizen and state, was still issued by Reich President von Hindenburg pursuant to Article 48 of the Reich Constitution. I have in mind the decrees of the Reich President for the protection of the people and state, dated 28 February 1933 (Reichsgesetzblatt, part 1, page 83). In article 1 of this decree the pertinent basic laws of the Weimar Constitution were voided and curtailments of personal liberty, the rights of free speech, including freedom of the press, the right to organize and assemble, interference in the privacy of the letters and mails, telegraph and telephone, orders for searching of homes and confiscations, as well as limiting property were declared valid, also outside of the legal limitations otherwise designated for it.

From a formal viewpoint there can be just as little doubt about the validity of this decree as there can be about any other so-called constitutional or basic state law issued by the Reichstag, the Reich Cabinet, the Ministerial Council for Reich Defense, or by Hitler himself.

Gentlemen of the Tribunal:

On behalf of the defendant Rudolf Hess, I have already stated that he assumed the full responsibility for all laws and decrees which he has signed in his capacity as the deputy of the Fuehrer, as Reichsminister and member of the Ministerial Council for Reich Defense.

I have refrained from presenting documentary evidence in reference to accusations which, as a sovereign state, merely concern the domestic affairs of the German Reich and have no bearing on the crimes against peace and crimes against the laws of war asserted by the Prosecution. I shall, therefore, now also only touch on such laws and constitutional and political measures which have some recognizable connection with the actual counts of the Indictment and the common plan or conspiracy asserted by the Prosecution.

The Indictment accuses the defendant Rudolf Hess of having sponsored the military, economic and psychological preparations for war and to have participated in the political planning and preparation of wars of aggression. As evidence for this assertion, the Prosecution pointed to the fact that the defendant Rudolf Hess, in his capacity as Reich Minister with Portfolio, co-signed the law of 16 March 1935, for the reconstruction of the armed forces. This law reintroduced general conscription in Germany and stipulated that the German peace army was to be divided into 12 corps commands and 36 divisions.

For this trial the proclamation which the Reich Cabinet directed to the German people in connection with the publication of this law and which was placed ahead of the law in the Reichsgesetzblatt, appears to me no less important than the contents of this law. I refer to the contents of this proclamation which has been presented as an exhibit.

This proclamation of 16 March 1935, contains no essential arguments on this question which had not already previously been brought out by the democratic German government at the time of the Weimar Republic.

Your Honors, the Tribunal has permitted me at least to read some of my brief in connection with this question. With reference to the fact, however, that defense counsel for defendant von Neurath has already referred to this question in detail, I shall merely refer to his argument in this connection and I shall therefore forfeit, on my part, coming to that question in detail once again.

[At this and succeeding points marked by asterisks, Dr. Seidl adduced arguments regarding the alleged unfairness of the Versailles Treaty. The Tribunal ruled that such arguments were irrelevant and refused to hear them, whereupon Dr. Seidl omitted portions of his prepared address.—Ed.]

The re-introduction of general military service by the law of March 16, 1935, is apparently not considered in the Indictment as a punishable offense in itself, but only as part of the general plan asserted by the Prosecution, which is claimed to have been intended to commit crimes against peace, against the rules of war and against humanity. Whether such a plan ever existed at all, whether and to what extent the defendant Rudolf Hess was involved in it and what part the re-introduction of general military service may have played in both an objective and a subjective way, I shall take up in detail later.

Within the scope of the common plan, of having planned and prepared a war of aggression, the defendant Rudolf Hess is also accused of having, in his capacity as deputy of the Fuehrer, set up the foreign organization of the NSDAP, the National League for Germans Abroad, the German Eastern League, the German-American Bund and the German Foreign Institute. The documents submitted by the Prosecution in this connection are not able to furnish proof to the effect that the defendant Hess himself issued directives or orders to these organizations, which could have caused them to pursue activities similar to those of a fifth column.

The testimony of the witness Bohle, Stroehlin and Alfred Hess has, on the contrary, proved that the defendant Hess, in particular, forbade these organizations and leaders in the most definite way to interfere in the internal affairs of other countries. The Prosecution has not been able to prove in any way that the above named organizations had actually developed activities which were aimed at undermining the structure of foreign states from within.

Under these circumstances it is superfluous to go into the activity of the above-named organizations and establishments in more detail, all the more so that there is nothing at all tending to prove that there was any causal connection between the tasks and functions of these organizations and the events which later led to the outbreak of war in the year 1939.

The Prosecution, furthermore, tried to prove that defendant Rudolf Hess also took a decisive part in the occupation of Austria on 12 March 1938. I do not intend to enter into details of the history of the annexation and to consider from the legal point of view the facts which actually led to the annexation of Austria to the German Reich in the year 1938.

In order to save time, again I shall refer to the extensive statement made by the Defense Counsel for the co-defendant Dr. Seyss-Inquart.

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Whatever now concerns the participation of the defendant Rudolf Hess and the Party in the execution of the annexation, the evidence has shown here only that the annexation of Austria was an incident which did not have anything to do with the National Socialist Party in the Reich as such. It is sufficient to refer in this connection to the testimony of the defendant Goering and to that of Dr. Seyss-Inquart on the witness stand, which shows that the question of the annexation was solved exclusively by the Reich; that is, therefore, by state authority and not by the Party.

If any doubts should still have existed about this, then they are removed by Document USA–61, 812–PS, presented by the Prosecution. It deals in this case with the letter of the Gauleiter of Salzburg, Dr. Friedrich Rainer, to Reich Commissioner District Leader Josef Buerckel, and in which he states, among other things:

"Soon after the seizure of power in the Eastern Province, Klaussner, Globocnik and I flew to Berlin in order to give a report to the deputy of the Fuehrer, Party Comrade Rudolf Hess, about the incidents which led to the seizure of power."

A report naturally would not have been required if the deputy of the Fuehrer and the Party itself had been directly and decisively participating in the solution of the annexation question. I do not mention this in order to give reasons of justification or excuses on behalf of the defendant Rudolf Hess. The findings are rather made exclusively in the interests of the historical truth.

I now come to the question of the Anschluss of the Sudetenland.

Three and one-half million Sudeten-Germans were incorporated into a state with eight and one-half million Czechs and Slovaks, without being granted a decisive influence on the state. All attempts of this national group to receive autonomy within the Czechoslovakian state structure remained without success. When the question of annexation with regard to Austria was solved, it could not but happen that the future position of the Sudeten Germans, which after all consisted of three and one-half million persons and whose membership in the German nation is beyond any doubt, was also subject to a test.

Now, I do not have the intention to take a stand in all questions of the annexation of the Sudetenland to the Reich in the actual and legal respect. In view of the fact that the Prosecution in the Trial Brief which it presented before the Tribunal against the defendant Hess treated the Sudeten German question and has also presented several documents as evidence, it appears necessary, in spite of all, to take a brief stand concerning them.

In document 3258–PS, GB–262, it deals with a speech of the deputy of the Fuehrer at the meeting of the Foreign Organization of the NSDAP on 28 August 1938. The letter takes a stand in the Sudeten German question in only general statements and that under emphasizing the principle of nationalities and the right of self-determination of the nations. Also the remaining documents presented by the Prosecution, USA–126 and USA–26, do not show on which a decisive participation of the defendant Rudolf Hess in the solution of the Sudeten German question could be based.

However, the extent of this participation can be completely ignored, as the annexation of the Sudetenland to the Reich cannot in itself be a charge of a criminal act according to international law. After all, the annexation of the Sudeten province was not carried out on the basis of a one-handed act of Germany or on the basis of a perhaps disputable agreement between the German Reich and the Czechoslovak Republic. The annexation, rather, took place on the basis of an agreement which had been concluded in Munich on 29 September 1938 between Germany, the United Kingdom of Great Britain, France, and Italy. In this Treaty exact and very detailed agreements were reached about the evacuation of the territory to be ceded and the step-by-step occupation by German troops. The final determination of the frontier was carried out by an international committee.

Without wishing to go into further details, it can still be said with certainty that this is a treaty which had been concluded on the basis of a free agreement of will and that all those participating maintained the expectation that it might provide the basis or at least a considerable prerequisite for an improvement of international relations in Europe.

I am now coming to another point of the Indictment. As well within the limits of the Indictment as a whole, as also in the personal accusation raised by the Prosecution against the defendant Rudolf Hess, the latter is accused of having participated in the outbreak of war and of being responsible for it. The defendant Rudolf Hess actually did take a stand in several speeches on the question of the Polish Corridor and the problem of the Free State of Danzig. In this case, however, the following still has to be stated:

Through the establishment of the Polish Corridor, not only the right of self-determination of the nations was violated—after all, more than one million Germans came under Polish domination in this manner—but in excess of this through the partition of the state territory of the German Reich into two areas completely separated from each other, a condition was established which was not only contrary to all economic common sense but which, in excess of this, had to become the cause for constant discord and incidents from the very first day on. Indeed, from the day of the signing the the Versailles peace treaty, the demand for a revision of the treaty, especially in the question of the Polish Corridor, has never been silenced at any hour. There was no party and no government in Germany which did not acknowledge and demand the necessity of a revision of the treaty, primarily in this point. It cannot be the subject of any doubt that, if Poland ought to have an independent access at all to the Baltic Sea under all circumstances, this problem could have been solved much more sensibly than by the establishment of the so-called Corridor and the thereby conditional partition of the German Reich into two areas which were completely separated from each other.

Something similar applies with regard to the status of the Free State of Danzig on the basis of international law and state sovereignty. It is not necessary to regard the facts more closely in this case, which in the course of time have led to constantly increasing difficulties and which in the end caused a situation which made a change of the position in regard to international law and state sovereignty of this purely German city necessary.

It is just as unnecessary to go into closer details with regard to the minority problem which was raised by the Polish Corridor and the establishment of a Free State of Danzig. The fact is that in the course of two decades, no less than approximately one million Germans were forced to leave their settlement area and especially under circumstances which could not remain without effect on the general political relations between the German Reich and the Polish Republic. It is also not as if the problems which have been raised here have been publicly discussed only since the coming into power of Adolf Hitler.

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Under these circumstances, it could not surprise anyone if after the seizure of power through Adolf Hitler and his party, the questions caused by the Polish Corridor and the separation of Danzig from the Reich were subject to an examination anew. This was all the less avoidable since after the conclusion of the German-Polish Treaty in the year 1934, Poland's attempts to exclude the German element to a continually rising extent did not stop in any way.

I do not intend to occupy myself anymore closely with the negotiations which were conducted by the German Reich with the Polish Republic, the aim of which was to find a modus vivendi under consideration of the justified interests of Poland. In any case, it appears important to me to keep the following facts in mind, and this seems to be essential for the reason that the Prosecution stated again and again that the German Government was obliged to do everything to clarify those questions and that, especially, the German Government was obliged to conduct negotiations and that the one thing that they should not have done was to start a war. The following statements are to show that it was indeed attempted to solve the problems through negotiations, the problems that could not be forgotten and which had to be brought to a solution.

For the first time the Reich Minister for Foreign Affairs discussed in the course of a conversation with the Polish Ambassador on 24 October 1938 the questions caused by the Corridor and the separation of the City of Danzig and suggested a solution which was to be based on the following foundation:

1. The Free State of Danzig returns to the German Reich.

2. An extra-territorial Reichsautobahn belonging to Germany and likewise an extra-territorial railroad with several tracks would be constructed across the Corridor.

3. Poland likewise obtains an extra-territorial road or Autobahn and railroad and a free port in the Danzig area.

4. Poland receives a guarantee of disposal for her goods in the Danzig area.

5. The two nations recognize their common frontiers (Guarantee) or the territories of both sides.

6. The German-Polish Treaty is being extended by 10 to 25 years.

7. Both countries include in their treaty a consultation clause.

The Prosecution itself submitted to the Tribunal the reply of the Polish Government to this proposal. The document is TC–73 No. 45, which describes the attitude of the Polish Foreign Minister Beck of 31 October 1938 and his instructions to the Polish Ambassador Lipski in Berlin. In this document the German proposal is flatly turned down on the ground that "any attempt to incorporate the Free City of Danzig into the Reich would invariably lead to a conflict, and the resulting difficulties would not merely be of a local nature, but would prevent any possibility of Polish-German understanding in all its aspects."

In fact, such also was the stand taken by the Polish Ambassador during another conversation between him and the Reich Foreign

Minister on 19 November 1938. Asked about the Polish Government's attitude regarding the German proposition of an extra-territorial arterial motor road and an extra-territorial railway through the Corridor, the Polish Ambassador declared that he was not able to make an official statement.

It is impossible to deny that the proposal made by Germany was very restrained and contained nothing incompatible with Polish honor or the vital interests of that State. One should be the more willing to admit this, as the creation of the Corridor and the separation of East Prussia from the Reich was really felt by the German people as the hardest of the territorial burdens of the Versailles Treaty. If, nevertheless, the Polish Government turned this proposal down, for reasons leaving hardly any prospect of finding a solution in subsequent negotiations, the conclusion could be drawn that at that time already Poland altogether lacked a sincere wish for an agreement, which would take into consideration Germany's legitimate interests. This impression was confirmed by the negotiations during the visit of the Polish Foreign Minister Beck to Berlin, on 5 January 1939, and the return by the Reich Foreign Minister to Warsaw, on 21 January 1939. If, in spite of this hostile attitude of Poland the Reich Foreign Minister repeated the proposition made on 24 October 1938 in another meeting with the Polish Ambassador on 21 March 1939, this must lead to the conclusion that the German Government was sincerely desirous of solving, by means of negotiation, the questions relative to the Corridor and the separation of Danzig. Thus it cannot be seriously denied that the German Government tried to solve the Danzig question and that of the Polish Corridor by negotiation and that it made very moderate proposals in that respect.

The reply to the German proposals of 21 March 1939 was a partial mobilization of the Polish armed forces. It need not be defined as to what was the connection between the partial mobilization ordered by the Polish Government and the British proposal for consultation, dated 21 March 1939, and whether, incidental to the transmission of this consultation proposal in Warsaw, the declaration of guarantee of 31 March had already been promised or contemplated. There can be no doubt, however, that the partial mobilization of the Polish armed forces, as also admitted by the British Prime Minister Chamberlain in a declaration before the House of Commons on 10 July 1939, was bound to do anything but create favorable prerequisites for further negotiations. As a matter of fact, the subject of the memorandum of the Polish Government handed by the Polish Ambassador Lipski on 26 March 1939 was a complete rejection of the German proposal. It was declared that extra-territoriality for the highways could not come into the question, and that a reunion of Danzig with the Reich could not be considered. In the conversation between the Reich Foreign Minister and the Polish Ambassador, which followed the handing over of the Memorandum, the latter declared openly that it was his unpleasant duty to point out that to pursue further the German plans, particularly insofar as they had a bearing on the return of Danzig to the German Reich, would be tantamount to a war with Poland.

If I have stated that the connection between the partial Polish mobilization of 23 March 1939 and the Polish memorandum of 26 March 1939 containing a complete rejection of the German proposal on the one hand, and the proposed British guarantee-pledge of 31 March 1939 on the other hand remains undecided, this appears justified with regard to the proposed "formal declaration" made by the British Government as early as 21 March in Warsaw, as well as in Paris and Moscow. This "formal declaration" was to announce the opening of immediate discussions on measures of mutual resistance against any threat against any European state. Furthermore, the speech by Prime Minister Chamberlain on 17 March in Birmingham, and the speech of the British Foreign Minister Lord Halifax of 20 March in the House of Lords, reflected a point of view bound to encourage the Polish Government all the more towards stubbornness. As a matter of fact, the proposed step of "a mutual formal declaration" already proposed by the British Government to the Governments in Warsaw, Paris and Moscow, proved to be the opening of extended discussions whose purpose it was to place an iron ring around Germany. It was thus clear from the outset under such conditions bilateral negotiations between the German and the Polish Government promised but little success, in any case as long as those discussions lasted. In another memorandum handed to the Polish Foreign Minister on 28 April 1939, already submitted by the Prosecution, the German Government nevertheless once more explained its attitude completely and established once more its readiness for further negotiations. Contents of this memorandum, including proposals made in March 1939, were announced publicly by Adolf Hitler in his speech delivered in the Reichstag on 28 April 1939.

In reply to the memorandum of the German Government of 28 April 1939, the Polish Government transmitted on 5 May 1939 a Note Verbale which has also been submitted by the Prosecution. The contents of that Note Verbale contained even more emphatically a complete rejection of Germany's proposition for solving the problem of the Corridor and the Danzig question.

Negotiations which began on 21 March 1939 between London, Paris, Warsaw, and Moscow for the purpose of establishing an alliance exclusively directed against Germany, did not proceed as desired. Nor was it possible for the French and British Military Commissions, sent to Moscow on 11 August 1939, to eliminate completely the difficulties arising from evidently far-reaching differences of opinion. It need not be established how important was the fact that Poland, which was to obtain a guaranteee by England, France, and the Soviet Union, publicly refused to accept military assistance from the Soviet Union. It also remains uncertain whether it is correct what the Soviet Foreign Commissar Molotov asserted during the emergency meeting of the supreme Soviet on 31 August 1939 to the effect that England had not only dissipated Poland's apprehensions, but that, on the contrary, had furthered them. It seems more important to examine the fundamental differences of opinion.

And now here I was going to refer to an extract from the well-known book written by the former British Ambassador in Berlin, Sir Neville Henderson. In consideration of the fact that the Tribunal does not desire to have this question read, but that on the other hand during the taking of evidence this extract had been admitted, I shall confine myself merely to refer to it.

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Meanwhile, the following actually occurred:

At the 18th Congress of the Communist Party of 10 March 1939, the President of the Council of People's Commissars of USSR, Stalin made a speech in which he intimated that the Soviet Government considered it possible or desirable to reach a better understanding even with Germany. Hitler understood this hint perfectly well. Foreign Commissar Molotov expressed similarly himself in his speech before the Highest Soviet on 31 May 1939. Thereupon the discussions between the German and the Soviet Governments were followed by the conclusion of a German-Soviet Trade and Credit Agreement. This Agreement was signed in Berlin on 19 August 1939. But already during these economic negotiations, questions of general political nature were discussed which, according to the Soviet Russian News Agency "Tass" of 21 August 1939, made known the desire of both parties to bring about the change of their policy and to ban war by the conclusion of a non-aggression pact. This Non-aggression Agreement was signed in Moscow in the night from 23 to 24 August 1939; therefore, as shown by the presentation of evidence in this trial, the attack of German armies against Poland was ordered two days before.

Besides this Non-aggression Agreement, a "Secret Supplementary Protocol" was signed as an important part of the former. On the basis of the presentation of evidence, especially on the basis of the affidavit of ambassador and Chief of the legal department of the Foreign Office, Dr. Friedrich Gaus, on the basis of the testimony of State Secretary in the Foreign Office Baron von Weizsaecker, and on the basis of the statements of the defendants von Ribbentrop and Jodl, the following contents of the secret supplementary protocol can be considered as established.

In the case of territorial-political reorganization in the territories belonging to the Baltic States, Finland, Esthonia, and Latvia should fall into the sphere of interest of the Soviet Union, whereas the territory of Lithuania should belong to the sphere of interest of Germany.

For the territory of Poland, the division of spheres of interest was made in the manner, that the territories lying to the east of the rivers Narev, Vistula and San should fall to spheres of interests of the Soviet Union, whereas the territories lying to the west of the demarcation line determined by these rivers should belong to the German sphere of interest. In other respects, an agreement was reached concerning Poland that both powers would come to a mutual understanding about the final settlement of questions concerning this country. With regard to the Southeast of Europe, the limits of spheres of interest of both sides were made in the manner, that the Soviet side stressed its interest in Bessarabia, whereas the German side declared a complete political disinterest in this territory. According to the testimony of several witnesses, but especially on the basis of the statements by Ambassador Dr. Gaus and State Secretary von Weizsaecker it is established that this secret agreement included in it a complete new settlement concerning Poland and the future fate of the Polish State.

The efforts to come anyhow to an understanding with Poland with regard to the question of Danzig and the Corridor made after the conclusion of the German-Soviet Non-Aggression Agreement and of the Secret Supplementing Protocol belonging to it failed. The Pact of Assistance which was made on 25 August 1939 between Great Britain and Poland did not prevent the outbreak of the war, but simply delayed it for a few days. I have no intention to go into particulars of the diplomatic negotiations which were conducted after the conclusion of the German-Soviet Agreement of 23 August 1939, so that an agreement can still be obtained. One thing, however, can be said with certainty: Should the one-sided guarantee declaration of England of 31 March 1939 show that it raised the already existing stubbornness of the Polish Government against the German offers, then an Assistance Pact with Great Britain would operate quite certainly against a readiness to negotiate on the part of the Polish Government. The failure of the negotiations which were carried out between Germany and Poland can surprise all the less, when one bears in mind the testimony of the witness Dahlerus before this Tribunal. Had not this witness confirmed that the Polish Ambassador in Berlin, Lipski, declared on 31 August 1939 that he was not interested in discussing the proposals of the German Government? He based this negative attitude on the statement that in case of war, a revolution will break out in Germany and the Polish Army will march towards Berlin.

Whatever the news might have been which induced the English Government to conclude the treaty with Poland and which possibly intimated at a rift in the German-Italian alliance and at symptoms of deterioration in the German State structure—and here I refer to the testimonies of the witnesses Dahlerus and Gisevius—the future will prove that such ideas were not based on any facts.

When on 1 September 1939, war broke out between Germany and Poland, it was at first the question of a localized conflict between two European states. But when Great Britain and France declared war on Germany on 3 September 1939, this conflict expanded into a European war, into a war, which as all modern wars between great powers indicated from its very beginning the tendency of developing into a world war because of the presently insufficient international organization and the complete collapse of the system of collective security. This war was to bring immeasurable suffering for all humanity, and when on 8 May 1945 the European war found its end with Germany's unconditional surrender, it left behind a Europe in ruins.

Adolf Hitler did not live to see Germany's collapse and unconditional surrender. Twenty-two former leaders of National Socialist Germany stand before the bar of the Tribunal in order to answer charges of having committed crimes against the peace, against the rules of warfare, and against humanity in the execution of a common plan.

The so-called London Agreement of 8 August 1945 concluded between the Government of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of France, and the Government of the Union of Socialist Soviet Republics, is the basis of this trial. The present Tribunal was created pursuant to this agreement, the composition, competency, and tasks of which were established by the Charter of the International Military Tribunal, which is a considerable part of the agreement concluded by the four mentioned Governments on 8 August 1945.

The Charter of the International Military Tribunal, though, does not only contain the regulations dealing with its composition, competence, and tasks; besides those, it includes—and these are the most important parts of the Charter—the regulations of material-juridical contents. This applies above all to Article 6, which contains the definitions of crimes against the peace, war crimes, and crimes against humanity, with all the characteristic facts of the case. Paragraph 3 of Article 6 of the Charter, which enumerates the characteristics of the so-called conspiracy in detail, has to be considered above all as the penal facts of the case. Furthermore, Articles 7, 8, and 9 of the Charter are to be considered as material-juridical regulations.

The subsequent part of my brief was not allowed by the Tribunal. It deals principally with the contents of the statement made by the defense at the beginning of this trial on the 21st of November; and therefore, I need not read them.

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In the indictment the defendant Hess is charged with having supported the seizure of power of the so-called Nazi conspirators, the strengthening of their control over Germany, and furthermore the furthering of the military, economic, and psychological preparations for war. He, moreover, is charged with having participated in the political planning and preparation of wars of aggression and of wars in violation of international treaties, agreements, and assurances, and in the preparations and planning of the foreign political schemes of the so-called Nazi conspirators.

Count I of the Indictment refers to the so-called common plan of conspiracy. According to it, all the defendants and various other persons have participated for a number of years prior to 8 May 1945 in the planning and execution of a common plan as leaders, organizers, instigators, and collaborators. This plan aimed at and brought about the commitment of crimes against the peace, of crimes against laws of warfare, and against humanity. It is asserted that the defendants planned, prepared, unleashed, and directed wars of aggression, and committed war crimes and crimes against humanity in the execution of this common plan.

While the Charter only knows three specifications of crimes—crimes against the peace, against the rules of warfare, and against humanity—the Indictment contains four of them. In the Indictment the common plan or conspiracy is made an individual and independent count of the charge, without the Charter bringing forth sufficient reasons for this. It may be left undecided whether conspiracy is considered a particular type of crime according to Anglo-American law. In view of the fact that the Charter rejects the use of both Anglo-American and continental law, but has established its own standards of law, and these "sui generis", only the text and spirit of the Charter itself is decisive.

According, however, to what is expressly stated in Article 6, paragraph 3, of the Charter, regarding the outlining of execution of a plan for the perpetration of a crime against peace, against the customs of war, or against humanity, it cannot be subject to any doubt that there cannot be an independent state of criminality as stated in Count 1 of the Indictment under the heading of Concerted Plan or Conspiracy. In all events, not according to the principle of the provisions of the Charter.

After the defendant Hess has been charged with all four counts of the Indictment, it is necessary first to answer count 1 of the Indictment:

The Indictment places at the center of the incriminated concerted plan or conspiracy the National Socialist "German Labor Party" of which Adolf Hitler had become the leader in 1921, and which the defendant Rudolf Hess also joined as early as 1921. Even the Indictment does not, apparently, claim that the party program of the NSDAP was actually criminal in itself. It appears all the less necessary to probe further into this question, as in the subsequent routine of political life the party program has not by any means played the part which could probably be supposed. Moreover, the appraisal of evidence has definitely revealed, as far as the position and rise of the NSDAP is concerned, that up to 20 January 1933 the National Socialist Party was a party alongside other parties; that it has fought with the same legitimate means as other parties for the attainment of its objectives; and that not least among the factors of its rise is that Germany experienced, in 1932–1933, as a consequence of the reparations policy of the victor powers in 1919, an economic and social decline of uncommon magnitude; and that, finally, on 30 January 1933, the Party, as the strongest, was entrusted with the formation of the Government in application of the provisions of the Reich Constitution and its leader, Adolf Hitler, was nominated Reich Chancellor.

During the so-called period of struggle, the Party, like all other parties, openly fought for the principles it represented, and the Prosecution could not admit in evidence a single argument which allowed the conclusion to be drawn that by using illegal means the Party and its leaders had been participators in a common plan aiming at launching a war of aggression. In fact, one has to keep in mind only the political, economic, and military condition of Germany in the first years after the end of World War I in order to recognize how mistaken the acceptance of such a plan aiming at starting a war is for that time. The conception put forward by the indictment reveals not only an entirely false idea of the economic, political, and military conditions which Germany faced as a consequence of the peace settlement by Versailles, but this conception also discloses complete failure to appreciate the intrinsic virtue of any policy.

When Adolf Hitler had been appointed leader of the strongest party by the Reich President Von Hindenburg on 30 January 1933 as Reich Chancellor, it was necessarily out of the question for him and his Government, in which other parties participated, to start drafting a common plan aiming at a war of aggression, being not abreast with political, and above all, economic conditions. The problems which the German Reich Cabinet faced at that time resulted directly from the fact that up to 7,000,000 unemployed people in Germany had to be put to work. As the witness Dr. Lammers stated, the elimination of economic and social distress actually was the most important question at the first Cabinet session. There was no question at all of a common plan aiming at launching a war of aggression and, in fact, it is inconceivable that in the circumstances at that time even one member of the Government could consider such an idea in some concrete shape. Furthermore, it has been established through the testimony of Dr. Lammers and other witnesses, that the subject matter of the first cabinet meeting and the resolutions there passed are contained in the governmental declaration of 1 February 1933, made known to the German people in the form of a manifesto of the German Government.

According to the Indictment, abrogation of the armaments restrictions imposed on Germany through the Versailles Treaty was the first aim of the conspiracy charged by the Prosecution. I have already expressed my opinion on that question. The final refusal of the victor powers to disarm in their turn, according to their pledge, has at least accorded the German Reich the right to obtain an equalization of armament through its own rearmament. This was not done in secrecy by any means, but in public, through the announcement of the reintroduction of the Draft Law on 16 March 1935. The Prosecution has not been able to show evidence for its assertion that this law was connected with, and was part of, the common plan aimed at bringing about a war of aggression. The exclusive purpose of the law was rather to reestablish Germany's right to equality at least for that question, sixteen years after the end of the First World War. In that connection brief reference is appropriate to a document which the Prosecution produced, together with nine other documents, so-called key documents, and which first of all serve the purpose of establishing the proof for existence of the common plan claimed in the Indictment. This is the written record on a discussion at the Reich Chancellery of 5 November 1937, USA–25, 386–PS.

As it is known to the court, this is not a literal reproduction of Adolf Hitler's statements, but a report of Colonel Hossbach which was drafted by the latter 5 days later, viz., on 10 November 1937. I have no intention of entering any further into the contents of this document. I refer here to the statements which other defense counsel have made on this question. I only mention that when addressing this speech to the Commanders-in-Chief and the then Minister of Foreign Affairs, Hitler had a chronological plan in view which reveals no conformity whatever with the subsequent events. In these circumstances the existence of a determined and well-outlined plan by Hitler himself even seems very unlikely. Only one conclusion can, with certainty, be drawn from the contents of this document; namely, that until 5 November 1937 Hitler himself only thought of an amicable settlement of the territorial problems raised by the Versailles Treaty. For this reason, therefore, there can have been no question of a common plan aiming at the launching of a war of aggression, at least, up to this time.

This document, however, is still worthy of notice for another reason: The report begins with the Fuehrer's assertion "that the subject of today's conference is of such importance that its discussion in other states should belong to the Forum of the Government Cabinet. He (The Fuehrer) however, considering the importance of the matter, refrained from making it the subject of discussion in a full session of the Reich Cabinet." First of all, it can be left undecided in how far other questions from 1937 on were still dealt with by the Reich Cabinet in Cabinet sessions, or in the so-called circulation procedure; in the administrative procedure or in the legislative way. The conclusion can, however, be drawn with certainty by reason of the total outcome of the presentation of evidence and in particular by reason of witness Dr. Lammers' statements and other witnesses, but also from a great number of documents submitted by the Prosecution itself that at the latest, from 5 November 1937 on, all problems concerning the question of war and peace were no longer dealt with by the Government as State Authority, nor by another larger circle of collaborators remaining almost the same, but exclusively by Adolf Hitler himself.

In all probability this situation already existed in the year 1933. In this connection, I should like to draw attention to the statements of several defendants in the witness box who, for example, were informed of the reoccupation of the demilitarized zone of the Rhineland in the same way as any other citizen, i.e., by means of the press and radio.

It is certain, however, that all important political and military decisions were taken by Adolf Hitler alone after 5 November 1937, and particularly after the so-called Fritsch crisis and the change of the Reich War Ministry into the High Command of the Wehrmacht which it involved. According to witness Dr. Lammers' statements, general conferences between the Reich Government, the Supreme Party Directorate and the Generals never took place. According to the statement of this witness and others, it was rather that a closer connection never existed between these three institutions. Indeed, not a single one of the documents submitted by the Prosecution reveals anything which might cause us to admit the existence of an independent collaboration between the Reich Government, the Supreme Party Directorate and the Reich War Ministry or afterwards the High Command of the Wehrmacht and the Commanders-in-Chief of the Wehrmacht Branches and their Chiefs of Staff. On the contrary: If a positive conclusion can really be drawn from the presentation of evidence, it is that the power was concentrated exclusively in the hands of Adolf Hitler, that the Reich Government, the Supreme Party Directorate and the Wehrmacht received their orders and directives only from him; that it was Hitler's own policy to prevent a working and independent combination of these institutions.

It can thus also be explained that in all questions of a political or military nature, only those officers were included which had directly to do with the task to be carried out. It is clear from all the documents submitted by the Prosecution that, as a rule, at the conferences presided over by Hitler, there was no question of conferences as is customary in parliamentary Democracies, but they were essentially only concerned with the issuing of orders.

It is not necessary to examine in detail the statements on their relation to Adolf Hitler made by nearly all the defendants; nor is it necessary to define an attitude towards the statements on the attitude assumed by a whole series of other witnesses regarding Adolf Hitler's position in the German Governmental system. One thing can be said with certainty: At the latest, from 5 November 1937 on Hitler's position was so commanding and his treatment of all decisive political and military questions so free of doubt that for this reason alone there could be no grounds left for the acceptance of a common plan.

The defendant, Rudolf Hess, though the Fuehrer's Deputy and the highest political leader for Party matters, did not contribute to nor take part in any of the conferences or any other important political or military decisions characterized by the Prosecution as being essential to prove the existence of a common plan, just as little as he contributed to or took part in the conference of the Fuehrer in the Reich Chancellery on 5 November 1937 (USA 25). The same holds good, for example, for the next exhibit USA 26 (388–PS) submitted by the Prosecution.

This is the case of the most important case "Gruen" Czechoslovakia. Without having to enter any further into the details of this document, it can be said without more ado that it deals only with what is entirely the work of the General Staff, which was originally intended as a draft, and afterwards elaborated into a real operational plan. This operational plan was not put into action, the documents referring to case Gruen, on the contrary, concluding with direction No. 1 of the Fuehrer and Supreme Commander of the Wehrmacht, which refers to the occupation of the Sudeten German areas separated from Czechoslovakia by virtue of the Munich Agreement of 29 September 1938. In these circumstances, it is superfluous to deal further with the letter of the Chief of the High Command of the Wehrmacht to the Fuehrer's Deputy of 27 September 1938, which is also contained in the documents for the Gruen case and refers to the carrying out of mobilization measures which were to be effected without the issuing of a mobilization order or a corresponding code word.

What I have already said concerning Document USA 25 holds good in the same way for Document USA 27 (L–79). This is another so-called key document having as subject the instruction of the Commanders-in-Chief of the Wehrmacht Branches and the Chiefs of the General Staff by the Fuehrer in the new Reich Chancellery on 23 May 1939. Without intending to enter into the importance or the value of this document as evidence, the Fuehrer's speech closed with the order to set up a small Research Staff in the High Command of the Wehrmacht; this document shows clearly that no common plan in the shape asserted by the Prosecution can have existed, especially not between the defendants now facing their trial. Not a single Minister or official of civil administration took part in this conference at the Fuehrer's Headquarters, which in reality was not a conference but an instruction and issuance of orders.

The next three documents submitted by the Prosecution as key documents refer to one and the same subject, namely to Adolf Hitler's speech addressed to the Commanders-in-Chief of the Wehrmacht on 22 August 1939. The following documents are in question: USA 28 (L–3), USA 29 (798–PS) and USA 30 (1014–PS). I will not enter any further into the value of these documents as evidence, although it is obvious that these cannot be equivalent documents, and though it is quite clear that a corresponding reproduction to some extent of Adolf Hitler's expositions is out of the question. None of these documents reveal their authorship. Moreover, the statements differ considerably one from another as far as volume and contents are concerned.

Document USA 29 seems to contain the most complete reproduction of Hitler's statements. And here again the conclusion is most worthy of notice, a conclusion which throws some light upon the situation at that time and defines the event which made it possible for Hitler to make such a speech to the Commanders-in-Chief: "I was convinced that Stalin would never accept the English offer. Russia is not interested in the maintenance of Poland and then Stalin knows it means the end of his regime, it being immaterial whether his soldiers come off victorious or vanquished. Litvinow's solution was decisive. I gradually changed Russia's attitude in this matter. In connection with the commercial treaty we engaged in political talks. Proposal for a nonaggression pact. Then came a general proposition from Russia. Four days ago I took a special step which caused Russia to signify her willingness to conclude it yesterday. The personal contact with Stalin is established. Von Ribbentrop will conclude the Treaty the day after tomorrow. Poland is now in the position I wanted her in . . ." Besides the Commanders-in-Chief, no minister or leader of the Party, specifically not the defendant Rudolf Hess, attended this speech of the Fuehrer.

The same holds good for Document 789–PS (USA 23). The subject of this document is a discussion with the Fuehrer on November 23, 1939. It appears from this document that here again only the Commanders-in-Chief of the Wehrmacht were assembled to receive the Fuehrer's directions for the imminent operations in the West.

The next key document is Exhibit USA 31; namely, directive No. 21 for the Barbarossa case. This was a question of a directive by the Fuehrer and Supreme Commander of the Wehrmacht which had an exclusively military character and was intended only for the sphere of the Wehrmacht. Any participation by civilian administrative officers or of the Party, even in the person of the highest political leader; namely, the defendant, Rudolf Hess, is excluded from the first by the nature of this directive.

It appears also from document USA 32 (2718–PS) the subject of which is a file memo on the result of a conference on 2 May

1941 about the Barbarossa case, that neither the deputy of the Fuehrer nor any other political leader took part in this conference.

The last so-called key document to discuss is USA 33 (1881–PS) an account by Ambassador Schmidt of the conversation between the Fuehrer and the Japanese Foreign Minister Matsuoka in Berlin on April 4th, 1941. By the very nature of this conference there could be as a matter of course, no question of any participation in it by the defendant Rudolf Hess or by any other political leader of the Party. However, something else appears from this document; namely, the fact that it is not only false to talk about a common plan within Germany aiming at a war of aggression, but even more that this, that no kind of close political or military cooperation existed between the so-called Axis powers, in any case as far as the relations between Germany and Japan are concerned.

What conclusion can now be drawn from the contents of this so-called key document which the prosecution itself has characterized as particularly relevant as to the existence of a so-called common plan? Without wanting to express a view as to the material relevance of those documents, in any case it is established by these notes that the defendant Hess was not present at any of these conferences or when these orders were issued. If, in appraising this circumstance, one considers the further fact that the defendant Rudolf Hess was the Fuehrer's deputy and therefore the highest political leader, and that furthermore, after September 1st, 1939, he was designated as the Fuehrer's successor after the defendant Hermann Goering, then there would not seem to be in fact any place for the assumption of a common plan in the form asserted by the prosecution.

In this connection, may I refer to the report of the Chief of Staff of the United States Army to the Secretary of War for the period from July 1, 1943, to June 30th, 1945. I quote: "The proofs at hand show that Hitler's original intention was to create a Greater German Reich that would dominate Europe by absorbing the Germanic peoples in the countries bordering on the German Reich and by strengthening these new boundaries. For the achievement of this aim Hitler pursued a policy of opportunism by which he succeeded in occupying the Rhineland, Austria and Czechoslovakia without military resistance. No proof has yet been found that the German High Command had an over-all strategic plan. The High Command did fundamentally approve Hitler's policy, but his impetuous strategy outran Germany's military capacities and finally led to Germany's defeat. The history of the German High Command since 1938 is full of constant personal conflicts in which Hitler's personal order increasingly prevailed against military judgment.

The first clash occurred in the year 1938 and ended in the dismissal of von Blomberg, von Fritsch and Beck, and in the elimination of the last important conservative influence on German foreign policy.

"The campaign in Poland, France, Norway, and the Netherlands resulted in serious dissensions between Hitler and the generals, with regard to details in the execution of the strategic plans. In every case, the general staff favored an orthodox form for the offensive, whereas Hitler was for an unorthodox attack, the objectives of which lay deep in enemy territory. In every case, Hitler's idea prevailed and the really amazing success of each of these successive campaigns raised Hitler's prestige to a point where one no longer dared to oppose his views. His military self-confidence became boundless after the victory in France, and henceforth he began to criticize and disparage his generals' way of thinking even in the presence of junior officers. So the result was that no opposition was brought forward by the general staff when Hitler made his fateful decision to advance against the danger threatening in the east.

"By Italy's entrance into the war, Mussolini intended to realize his strategic plans for the expansion of his empire under the cover of the German military successes. Field Marshal Keitel states that the Italian declaration of war was in contradiction with the declarations made to Germany. Both Keitel and Jodl agree that it was not desired. From the beginning Italy was nothing but a burden for the German war potential. Because of her dependence for oil and coal, Italy was a constant source of friction in the economic field. Mussolini's one-sided campaign against Greece and his attack on Egypt forced the Germans into the Balkan campaign, as well as into the African campaign and led to an overstraining of the German forces which became one of the chief factors of the German defeat.

"Moreover, there is no evidence whatsoever of a strategic planning between Germany and Japan. The German general staff recognized the fact that Japan was obligated by her neutrality pact with Russia, but hoped that Japan would tie up strong British and American land, sea, and air forces in the Far East . . ."

The statements of the defendants Keitel and Jodl, which they have made on the witness stand, are essentially the same as the statements of the American chief of staff; so further details on this point are superfluous. It may be considered as proven that not once did a complete agreement exist among the most intimate circle of Adolf Hitler's associates on the measures to be taken in the political and military field, whereby, first of all, the constitutionally established relationship of rank between the officers of the armed forces and the head of the state and supreme commander need not be considered. One sees that the existence of a common plan aiming at war cannot be accepted even in the case of that group of persons for whom it first seemed most likely.

The second common goal of the conspiracy is declared by the indictment to be the appropriation of the territories which Germany had lost as a result of the World War of 1914–1918. The preamble to the Treaty of Versailles provides for the possibility of a revision of the Treaty. Going beyond this, the demand for the reunion of Austria to the German Reich and the annexation of the Sudeten German regions cannot in itself be concluded to rest on the existence of a plan which was to have been realized at the proper moment by the use of violence or by way of war. As a matter of fact, by a disregard of the right of self-determination of nations, these territories had already been prevented in the year 1919 from annexing themselves to the German Reich. On this question I can refer to the statements I made at the beginning. Actually, the annexation of Austria took place—this can perhaps be said as a result of the presentation of evidence—under circumstances which cannot be described as warlike and which permit the conclusion that the greater part of the Austrian population approved the annexation. Concerning the Sudeten-German question, it suffices here to refer to the Munich agreement between Germany, Great Britain, France, and Italy by which the reunion of the Sudeten-Germans with the Reich was settled.

And finally, the third aim of the common plan was described as the annexation of additional territories on the European continent which should serve the conspirators as "Lebensraum." The indictment is very unclear in this point and lacks every substance. But in fact the question of the so-called "Lebensraum" is a problem which is completely independent of the National Socialist ideology and is determined by the size of the area and number of inhabitants. Every German Government had to and must deal with this question. If any argument by Hitler found a lasting response in the German people, it was the demand made by him for an appropriate share of the German people in the material wealth of the world. This demand appears to be all the more justified, as the proportion between the size of the area and the number of inhabitants was more unfavorable for the German people than for any other people.

I do not need to give detailed reasons in what insufficient way the most important sources of raw materials are distributed and that certain raw materials are completely monopolized. It is certain that the bitterness about the unjust distribution of the material wealth of the world had to increase in the German people, as not only every reasonable revision was rejected, but moreover it was said by the opposite side in an unmistakable manner that the nations were divided into two classes; namely, the "haves" and the "have-nots." In fact, this classification could be felt as nothing else than ridicule. Moreover, even after 1933 there was no unanimous opinion about the possible solutions concerning the removal of the difficulties resulting from the need for space. So as, for instance, the defendant Rudolf Hess belonged precisely to those who wanted to solve the problem of "Lebensraum" by the acquisition of colonies if possible. For instance, in a big speech in Stettin, on 21 March 1936: "The natural way to make more food available for the people of Germany, to improve our living standard, is to supplement it by having colonies. Therefore, the Fuehrer by stating his willingness to return to the League of Nations, connected with this the expectation that the question of colonies would be submitted to examination. The Fuehrer knows, that a people without a sufficient area, without a sufficient food basis, a hungry people must in the long run become a center of unrest because of its instinct of self-preservation against which the most ingenious statesman is powerless. For hunger is a natural instance which cannot be subdued either by warnings or by others. Our desire for colonies is therefore only the desire for a pacification of Europe for a long time, and therefore the question of the allocation of colonies to Germany is part of the Fuehrer's big proposal of pacification. * * *"

The connection between the unjust distribution of the material goods of the world which contradicts all economic reason and the political tensions which shake the peace of the world again and again, cannot simply be overlooked.

Your Honors, I now turn to the legal evaluation of the state of affairs which may be considered as actually established. As I have already stated, article 6, paragraph 3, of the Statute is not the standardization of an own and independent state of criminality, but the expansion of the criminal responsibility of the leaders' instigators, and participants who have taken part in the drafting or in the execution of a common plan for the committing of a crime mentioned in paragraph 2. According to the mentioned regulation, these persons are to be responsible not only for the acts which they themselves have committed, but they also are to take upon themselves the penal consequences for all acts which were committed by any person in the execution of such a plan.

In article 6, paragraph 2a, of the Statute the fact of a crime against the peace is defined as follows: "The planning, the preparation, the initiation, or the execution of a war of aggression or of a war which violates international treaties; the conclusion of agreements or the giving of assurances, or the participation in a common plan or in a conspiracy for the execution of one of the abovementioned acts."

While it is expressly defined in article 6, paragraph 3 of the statute that the criminal responsibility of the participant in the draft of a common plan is limited to acts which "have been committed by any person in execution of such a plan", the crime against the peace is according to article 6, paragraph 2a, of the Statute already completed with the "conclusion of agreements or the giving of assurances or the participation in a common plan or in a conspiracy for the execution of a plan which has as its aim the preparation or initiating or execution of a war of aggression." In contrast to article 6, paragraph 3, it is here not necessary that an act of execution is actually committed.

I do not intend now to deal with the question more specifically whether the war as such and especially the start of a war of aggression was a crime according to international law valid at the time of the day of the outbreak of war, on 1 September 1939. This question has already been discussed in the opening speech of the defense. This examination of the legal side of this question has shown that neither the League of Nations agreement nor the Briand-Kellogg Pact contain anything which would allow the conclusion that the starting of a war was a criminal and therefore punishable offense. Valid international law knew neither a criminal responsibility of the state as a body corporate nor even less a criminal responsibility of the agencies of the state, such as the head of the state, the members of the government, the military commanders, the economic leaders, etc.

It can also be left undecided to what this unsatisfactory condition of international law had to be traced back. It already was correctly pointed out that the idea of sovereignty in the refusal of the great powers in particular to relinquish some of these rights of sovereignty in the interest of a better supernational organization, also were a reason for the unsatisfactory status of the international law especially in this question. In connection with it there is another fact which does not seem to be less important to me, namely that it was not possible until now to create an effective organization and a procedure which would guarantee a real satisfaction of the justified claims of the peoples for a proper participation in the material goods of the world, and which would also in other respects take care of a just settlement of the conflicting interests.

Already on the basis of these establishments and examinations there can hardly be any doubt that a crime against the peace, as it has found its factual definition in article 6, paragraph 2a, of the Statute, does not exist. This section of article 6 of the Statute does not have a sufficient basis in existing international law.

I omit the following important statements as well as the following statements concerning the secret German-Russian treaty of 23 August 1939, which deals with the jurisdiction of the Tribunal. The Tribunal has to consider officially whether the jurisdiction still exists concerning this secret treaty.

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Moreover, the following is to be said about article 6, paragraph 3 of the Charter: The constitutive facts of a conspiration, as they have been expressed in article 6, paragraph 3, are a typical institution of Anglo-American law. The Continental European law does not know such a state of criminality. But there cannot be any doubt that international penal law, insofar as there exists any in the restricted and actual sense, and if one does not understand in it the standards which are to be observed in the application of national or foreign law, also does not know the concept of conspiracy as a criminal state of facts.

But it is not only the question of the prevailing international law and the concordance of the Charter with the same, which is to be put to test. The issue is rather also the answering of the following question:

In the opening speeches of the four chief prosecutors and also in the discussions prior to the trial concerning the legal bases of the trial, two entirely contradictory arguments were introduced. While some argued that the Charter was a complete expression of the prevailing international law and was in agreement with the common legal conviction of all members of the international legal community, the others asserted that it was one of the main tasks of the International Military Tribunal now being instituted to develop international law further. This latter conception for instance. stands out clearly in the report of the American Chief Prosecutor to the President of the United States of 7 June 1945. Here it is stated verbatim among other things: "In initiating this trial, we must also remain aware of the aims with which our people assumed the burdens of war. After we entered the war, and our men and our wealth were mobilized to eradicate this evil, there was the general feeling among our people that out of the war there should arise unmistakable rules and a practical machine from which anyone who entertains thought of a further predatory war should realize that he will be personally held responsible and that he will be personally punished."

Or in another part of this report, the following is stated literally: "* * * According to the International Law of the 19th and early 20th century, the waging of war was not generally considered as unlawful or as a crime in the legal sense. Summed up, the prevailing doctrine held that both parties in any war were to be considered as being in the same legal situation and therefore had the same rights." The legal considerations in the report then actually conclude with the following challenge: "* * * An attack against the fundamental principles of international relations must be considered as nothing less than a crime against the community, which rightly must protect the integrity of its fundamental agreements by punishing the aggressor. We therefore propose to raise the challenge that a war of aggression is a crime and that modern international law has abandoned the justification according to which he who instigates or wages a war acts in accordance with the law."

And as a matter of fact, it would not be necessary to raise the demand for a penal law if the action under consideration already had been threatened with punishment by existing law.

It is obvious that the fulfillment of such a demand by a court of law, regardless of whatever legal bases there may be for its proceedings, would be contradictory to a principle derived from the penal legislation of nearly all civilized nations and which finds its expression in the rule "nulla poena sine lege" meaning that an act can only be the object of punishment if the punishment has been provided for by a law before the act was committed. This state of affairs seems all the more remarkable, since the rule "nulla poena sine lege" is a principle anchored in the constitution of practically all civilized nations. Thus for example, it is contained in Article 39 of the English Magna Charta of King John in 1215, in the North American Constitution of 1776 and in the declarations of the French Revolution in 1789 and 1791. This principle of "nulla poena sine lege" is not only contradictory to the assumption of a crime against peace, such as is to be defined by the Tribunal in the further development of prevailing international law as a punishable act in the opinion of some of the prosecutors but it is also especially contradictory to create now also in the further development of international law an independent state of criminality of conspiracy by judicial opinion. In this it cannot differentiate whether this conspiracy has as its aim the commitment of a crime against the peace or the commitment of a crime against the customs of war. Also, the assumption of a common plan or an agreement to commit war crimes as an independent state of criminality is not compatible with the principle of "nulla poena sine lege". Applicable are rather here also, as already rightly expounded by the French chief prosecutor, the rules pertaining to participation according to the native law of the perpetrator or according to the local law of the place of perpetration. These rules pertaining to participation will be limited under the given circumstances to the extension of the threat of punishment for cases of complicity, instigation and assistance.

Apart from his participation in the general plan or complicity, as defined in count I of the Indictment, the defendant Rudolf Hess, within the limits of his personal responsibility for war crimes and crimes against humanity, is charged by the Prosecution for the contents of only one document, i.e., document GB–268 (R–96).

This is a letter of the Reich Minister of Justice to the Reich Minister and Chief of the Reich Chancellery of 12 April 1941, which deals with the introduction of punitive laws against Poles and Jews in the incorporated Eastern territories. The defendant Rudolf Hess plays a part therein only in so far as the letter mentions among other things that the deputy of the Fuehrer had proposed the discussion of the introduction of corporal punishment. If one takes into consideration that the staff of the deputy of the Fuehrer alone comprised 500 officials and employees and that for questions of legislation, there was a special department which dealt directly with the several ministries, it seems very doubtful, whether the defendant Rudolf Hess was personally concerned with the matter at all. In this connection I refer to the affidavit of the witness Hildegard Fath, Exhibit Hess No. 16. Considering however that the measure proposed for discussion by the deputy of the Fuehrer was not introduced, the knowledge of the defendant should not matter very much. Without it being necessary to probe any deeper into the subjective facts of the case, it can be said that, as can be deduced from the penal law of all civilized countries, there is here not even an attempt. The attitude of the deputy of the Fuehrer, as shown in the letter of the Reich Minister for Justice is penally irrelevant. It may be entirely left out of consideration whether a penal law would have been violated if the measure put up for consideration had effectively found its legislative outcome in a Reich law.

Another document submitted by the Prosecution is USA Exhibit 696 (062–PS). This refers to the directives of the deputy of the Fuehrer of 13 March 1940, dealing with the instructing of the civilian population as to the proper attitude to be taken in case of landing of enemy aircraft or parachutists on German Reich territory. This is the same document for which I applied for a correction of the translation because the translation from German into English was in my opinion not correct. This document however has been included neither in the trial brief submitted by the British Prosecution nor mentioned by Colonel Griffith Jones on February 1946 when he dealt with the personal responsibility of the defendant Rudolf Hess. Considering however that this directive has been officially submitted as documentary evidence, it becomes necessary to deal with it briefly.

Occasion for this directive of 13 March 1940 was the fact that the French Government officially and by radio gave instructions to the French civilian population as to how they were to conduct themselves in case of landings by German aircraft.

On the basis of those instructions of the French Government, the Commander-in-Chief of the German Luftwaffe considered himself obliged for his part to inform also on his part the German population accordingly via the official Party channels. He, therefore, issued a directive about the attitude to be adopted in the case of landings of enemy aircraft or parachutists, which was used as appendix to the mentioned order of the Fuehrer's deputy of 13 March 1940.

This directive, however, does not contain anything which is contrary to the laws and customs of warfare, as they have been expressed, for instance, in the Hague Convention on Land Warfare. This applies particularly to No. 4, which contains the instructions either to arrest or to "render" enemy parachutists "harmless". There cannot be the slightest doubt that according to the text as well as to the spirit of No. 4, this was only meant to say that enemy parachutists were to be fought and annihilated in combat if they did not surrender voluntarily and tried to prevent their arrest by using force, particularly by the use of firearms. This becomes evident from the word "or" alone. First of all their capture was to be attempted. This alone in the interest of the Intelligence Service. Only if this was made impossible by resistance should they be "rendered harmless", that means annihilated in combat.

Any other interpretation of this instruction would not only be contrary to the text and the spirit, but beyond that would also be contrary to the fact that up to the French campaign the war had been waged according to the rules which had been established, among other things, in the Hague Convention on Land Warfare and that, at any rate at that time, March 1940, the war had not yet developed into the mutual struggle of annihilation as it was to become after the outbreak of the German-Russian war. The fact that another interpretation is absolutely impossible, is also evident from the so-called "Commando Order" of the Fuehrer, dated 18

October 1942, which has been presented by the Prosecution under Exhibit USA 501 (498–PS). The deliberations for this order, for which quite different reasons existed by the way, and the issuing of this "Commando Order" by Hitler himself, in spite of the opposition of the Wehrmacht High Command and the Chief of the Wehrmacht Operational Staff, had been entirely superfluous, if the Commander-in-Chief of the Luftwaffe had already in March 1940 issued instructions which served the same purpose. It is furthermore expressly specified in figure 4 of the Fuehrer order of 18 October 1942, that captured members of commando groups were to be handed over to the SD.

As the German text of this directive to the order of 30 March 1940 is completely unequivocal and does not leave any doubt, I refrained from using additional evidence about this question. In the case, however, that the Tribunal should not share this assumption, it could not be avoided for the complete clarification of the facts that the Tribunal procure on its own initiative the instructions which the French Government issued at the beginning of the year 1940 to the French civilian population in case of the landing of German aircraft or German parachutists.

It is not necessary to deal closer with document GB–267 (3245–PS) which is also charged to the defendant Hess, as the contents of this document can under no circumstances be considered a crime against the rules of warfare or against humanity, if the above mentioned principles are admitted.

Besides as an individual person, Rudolf Hess is also accused as a member of the SA, the SS, the corps of political leaders, and the Reich Cabinet. As far as the membership of the SA and the SS is concerned, more detailed explanations are not necessary. From the documents presented by the Prosecution, it becomes evident that the defendant Hess had only the honorary title of Obergruppenfuehrer in those two organizations. No command or disciplinary powers were connected with it.

As deputy of the Fuehrer, however, the defendant Rudolf Hess held the highest office which existed in the corps of political leaders. It cannot be my task to take the position that I comment on every detail of the accusation made against the corps of the political leaders within the framework and in application of Article 9 of the Charter which is characterized by its motion to declare the corps of political leaders as a criminal organization. Considering the fact, however, that the defendant Rudolf Hess is not the only political leader there was, a few fundamental remarks seem to be justified.

According to Article 9 of the Charter, the Tribunal can state to a member of an organization that the organization to which the defendant belonged was a criminal one. A prerequisite for this is, according to the Charter, that this declaration of the Tribunal is connected with an act for which the defendant is being convicted.

One can understand under an act within the meaning of Article 9 of the Charter only a personally imputed and reproachable act or failure to act but on the other hand not the increased liability resulting from Article 6, paragraph 3 for the act of another. Since, however, neither in the Indictment nor in the trial brief dealing with the personal responsibility of the defendant Rudolf Hess, no act of any kind is imputed against him which contains the facts of a war crime or a crime against humanity; in this case a conviction of the defendant Hess, namely as a member of the corps of political leaders, would be synonymous with the establishment of a criminal responsibility for the acts or omissions of another. Although the defendant Hess was the highest political leader and although no action is imputed against him which contains the facts of a criminal case, he is to be convicted as a member of the reputedly criminal organization of which he was the leader; it cannot be denied that this is quite an unusual legal case.

But something else appears more important. The Defense was compelled to attack the core of the Charter, namely Article 6, as not being compatible with the generally valid principles of international law. Article 9 of the Charter is not less in contradiction with the common legal conviction of all members of the international legal community. There exists neither a legal statute in international law nor a legal statute in any national law which declares the membership in an organization as criminal without it being examined in each individual case, whether the person concerned has made himself personally guilty by his own actions or omissions. Contrary to the general principles of criminal law, as they are derived from the penal laws of all civilized countries, the Charter provides in Article 9 for a criminal responsibility and a collective liability of all members of certain organizations and institutions, and this without any consideration as to whether the individual members has incurred any guilt.

The Charter thus abandons a principle which is an integral part of any modern practice of criminal law. The rule of "no punishment without guilt" and the declaration that a certain organization is criminal, is a penalty for the members affected by it, is an essential part of the consciousness of criminal law of our time insofar as one understands by guilt the inclusion of those prerequisites of the penalty which justify the personal reprobation of the unlawful act as against the culprit. If already the fact of membership in a certain organization alone becomes the object of a sentence of criminal unworthiness, then the act which is construed as being blamable in law does not appear any more as a legally condemnable expression of the personality of the culprit. This must, in particular, apply to organizations which had hundreds of thousands, and even millions of members. Punishment without guilt has existed only amongst primitive peoples.

Liszt, who was at the same time a constructive thinker in the field of international law, says therefore appropriately:

"Just as religious teaching does not oppose the visiting of the sins of the fathers on the children and on the children's children, as in the dramas of the ancients blindly swaying fate and in the literature of today the law of heredity take the place of guilt, so does even the oldest law of all people know of no penalty without guilt."

Only in primitive law did there exist a criminal responsibility without guilt. As a matter of fact, in the history of law of all countries, the so-called criminal responsibility for the effects of crime without actual guilt was very soon replaced by the principle of responsibility for guilt only and thereby that state was reached which is alone compatible with the dignity of man. The regulation provided by Article 9 of the Charter signifies not only a deplorable contribution to the apparently irresistible trend of herding together of man, but it is moreover a return to the first beginnings of concepts of criminal law. Considering these facts it cannot be acknowledged that this provision of the Charter is in agreement with prevailing law as it is derived from the common legal convictions of all the members of the community of international law and from the general principle of criminal law of all civilized nations.

Rudolf Hess is finally accused as a member of the Reich Cabinet. In regard to his belonging to the Secret Cabinet Council, the following may be said. The presentation of evidence has shown that this Secret Cabinet Council was only created to avoid the resignation of former Reich Foreign Minister von Neurath appearing to public opinion as a breach between him and Adolf Hitler. Actually no session of this Secret Cabinet Council ever took place. The Council did not even convene in a constitutional session.

With reference to the Reich Cabinet, it is established on the basis of the results of the presentation of evidence that no cabinet meetings took place since 1937 at the latest. The tasks to be fulfilled by the Reich Cabinet, especially the legislative functions, were taken care of by the so-called circulating procedure. The presentation of evidence has shown further that from 1937 on at the latest, the great political and military decisions of Adolf Hitler were taken exclusively by him alone without making them known beforehand to the members of the Reich Cabinet. The Reich Cabinet, as an institution since Hitler's appointment as Reich Chancellor, has probably not made any decisive decision on politically or militarily important questions already very long before 1937. It would be completely misleading to assume that the members of the Reich Cabinet in the National Socialist State had even an approximately similar position as it is a matter of course in a state governed by parliamentarian principles. Just as little as there was a common plan of conspiracy among the men sitting in the prisoner's dock, was there something similar within the Reich Cabinet.

It was partly even so that opposing forces became apparent within the Reich Cabinet which by themselves alone would make it impossible to arrive at an agreement for a common plan, as it was expressed in the Indictment. It is sufficient here to point to the testimony of the witness Lammers and to the fact that Adolf Hitler, from whom such facts could not remain hidden, finally issued even a prohibition with the contents that the individual Reich Minister had no right to assemble any more for conferences on their own.

In this connection, something else cannot be left unmentioned. If the presentation of evidence in this trial produced anything with certainty, then it is the proof of the position of enormous political power and the unimaginable authority which Hitler had within the German governmental system. When General Jodl testified on the witness stand that there was no one who could contradict Hitler in the long run and that there could not exist anyone, then one may say that he hit the nail right on the head with a few words. This may perhaps be regrettable, but one cannot alter anything of the fact as such. If one now keeps also in view that this dominant position of Hitler became always greater during the years, then this alone should be sufficient to exclude the assumption of a common plan, as it is asserted in the Indictment.

In any case, the following must be said: The former party leaders, generals and members of the cabinet indicated before this Tribunal are accorded in this trial an importance because of Hitler's death which they actually did not have in public life of the past. While the entire political life was overshadowed in Germany during the past twelve years by the overwhelming influence of Hitler's personality, the absence of this man from the prisoners' dock affects this trial in a manner which undoubtedly must result in an entirely distorted picture of the political reality of the past twelve years.

Your Honors, I come now to the event which was to conclude the political career of the defendant Rudolf Hess—his flight to England on 10 May 1941. This enterprise is of considerable importance as relevant evidence in this trial. As is shown by the presentation of evidence, the defendant Rudolf Hess had made the decision for this flight as early as June 1940, that is, immediately after the surrender of France.

The execution of the plan was delayed for a number of reasons; especially certain technical conditions had to be fulfilled in advance. Besides, considerations of political nature played a part; namely, that such an enterprise could be accompanied by success only when political situations and especially the military position appeared favorable for the preliminary arrangements of peace negotiations, for reestablishment of peace was undoubtedly the aim which Hess pursued by his flight to England.

When the defendant Hess was led before the Duke of Hamilton on the day after his landing, he explained to the latter, "I come on a mission of humanity." During the conversation which the defendant had with Mr. Kirkpatrick of the Foreign Office on 13, 14 and 15 May, he explained to him in detail the motives which had induced him to take this extraordinary step. At the same time, he brought to his knowledge the conditions under which Hitler would be prepared to make peace.

On 9 July 1941 a conversation took place between Rudolf Hess and Lord Simon who appeared on the instructions of the British Government. I submitted the transcript of this conversation to the Tribunal as evidence and am referring to it.

It is shown by this document that the motive for this extraordinary flight was the intention to avoid further bloodshed and to create favorable conditions for the introduction of peace negotiations. During the course of this conversation, the defendant Hess handed a document to Lord Simon which stated the four conditions under which Hitler would have been prepared at that time to conclude peace with England. The conditions were:

"1. In order to prevent future wars between the Axis and England, a delimitation of spheres of interests is proposed. The sphere of interest of the Axis powers is to be Europe, and that of England its Colonial Empire.

"2. Return of the German colonies.

"3. Indemnification of German nationals who were domiciled prior to or during the war in the British Empire and who suffered damage to life or property because of measures taken by a government in the Empire, or through incidents such as pillage, riots, etc. Indemnification to British nationals on the same basis by Germany.

"4. Conclusion of an armistice and peace treaty with Italy at the same time."

Rudolf Hess explained to Mr. Kirkpatrick, as well as to Lord Simon, that such were the terms on which Hitler was prepared to make peace with Great Britain immediately after the conclusion of French Campaign and that this position of Hitler had undergone no further change since completion of the campaign against France. There are no indications of any kind why this account of the defendant should not appear plausible. On the contrary, it tallies very well with any declarations which Hitler himself had made on the subject of relations between Germany and England. In addition to that, the defendants Goering and von Ribbentrop confirmed also while in the witness box that the terms which Hess disclosed to Lord Simon corresponded with Hitler's views.

The fact that the terms disclosed by Hess mention Europe as the sphere of interest of the Axis powers should not result in the conclusion that this was to mean Europe's domination by the Axis powers. The declarations made by Hess, rather, demonstrate—they are included in written notes on the conversation between him and Lord Simon—with all clarity that this was merely meant to eliminate England's interference in Continental Europe.

What legal consequences result from these facts?

In the indictment, the defendant is charged, together with the other defendants, with having cooperated in the psychological preparation of the German people for war. To the extent that the charge of psychological preparation for war is part of the common plan, it may suffice to refer to the remarks I have made in that connection.

However, if the Prosecution also wants to claim that the defendant Hess went further and personally engaged in this psychological preparation for war, proof to the contrary is at least offered, disregarding his numerous speeches in favor of peace, by this flight to England and the intentions responsible for it.

Without going into detail as regards general circumstances and the personal relations between Hitler and the defendant Hess, one thing can be said with certainty: With his flight to England the defendant Hess accomplished a deed which in view of his position in the Party and in the State, and especially because of the fact that after Goering he was to become the Fuehrer's successor, can only be called a sacrifice, a sacrifice which Hess made not only for the sake of the German people and for the resumption of peace, but for the entire world.

This sacrifice was all the greater as Hess was one of the very few whose relation to Hitler was based on intimate personal confidence. If, nevertheless, the defendant decided to stake his position in the Party and everything that meant a personal bond with Hitler for the reestablishment of peace, this must lead to the conclusion that the defendant Hess likewise saw in war the ghastly scourge of mankind and that even if this were the only reason, there results little likelihood that it was his intention to prepare the German people for war.

Your Honors, the following statements deal with the question of what legal questions are to be drawn from the flight of the defendant Hess to England and in regard to his participation in the common plan alleged by the Prosecution, particularly in view of the attitude of the defendant, to what extent penal responsibility was incurred after the flight to England. The defendant himself does not wish to have any favorable conclusions drawn for him in this trial from this flight and the intentions connected with it. He has therefore asked me to omit a part of the following statement. Nevertheless, I consider it my duty as the defense counsel to draw all the legal conclusions resulting from the flight of the defendant Hess and the intentions connected with it and to point out the facts and points of view which speak in favor of the defendant.

As I have already brought out, there is reason to assume on the basis of evidence presented, that the plan claimed by the Prosecution did not exist. In case, however, the Tribunal should judge the results of the testimony differently and in application of article 6, paragraph 3 of the Charter, should accept the existence of such a plan, directed towards the beginning of a war of aggression, it becomes necessary to examine the question of what legal consequences the flight of the defendant Rudolf Hess to England and what the aims it contemplated had on his participation in the common plan as asserted by the Prosecution.

To this the following can be said: Article 6, paragraph 3 of the Charter extends the criminal responsibility of the defendant to include all acts committed by any person while carrying out the common plan maintained by the prosecution. The Charter itself contains no provisions as to whether and under what conditions withdrawal from a common plan is possible. This does not justify the conclusion, however, that such a withdrawal should be excluded as matter of principle. That assumption is out of the question for the very reason that the Charter quite clearly does not purport to give an exhaustive ruling on all questions of substantive and procedural law. If a withdrawal is permitted in Anglo-American law as a matter of fundamental principle, this should be possible with even greater reason under the Charter. For the Charter represents a compendium of principles in which well recognized institutions of Continental European law are also given consideration. Continental European law proceeds quite unequivocally from the idea that the responsibility of the perpetrator before the penal law reaches no further than the extent to which his actions or omissions are embraced by his will. The withdrawal from the attempt, as a reason for acquittal, has therefore become an institution which can be found in almost all European codes of law. If, according to Anglo-American Law, withdrawal from the conspiracy is possible, there can be no doubt as to that possibility's existing, in principle, according to the Charter. There is all the more reason for that assumption in that it has been a practice to apply German Law in cases where the Charter fails to establish a binding rule. As regards the defendant Rudolf Hess, there should be even less reason for doubt, because the deeds charged against the defendant Rudolf Hess took place on German Reich territory. According to generally accepted principles of law, as they find expression in particular in the so-called International Penal Code of all nations, the so-called lex loci, i.e. the law of the place where the action took place, will be binding in this case.

Applying these principles to the behavior of the defendant Rudolf Hess and to his flight to England of 10 May 1941, it follows, and the evidence did not in any case produce anything to the contrary, that no subsequent developments can be embraced by his will. His influence on the events within the scope of war developments as a whole ceased, at the latest, with his flight to England. It contradicts all principles of penal law as they derive from the codes of law of all civilized nations to hold someone responsible, according to principles of penal law for a happening over which he had no influence and was no longer able to exert influence and which his will did not adopt. In this connection reference should also be made to the Prosecution's contention that the defendant Hess did not undertake his flight to England in order to create thereby favorable conditions for peace negotiations. That, on the contrary, it was his intention—this is the argument of the Prosecution—thus to protect Germany's rear in its planned campaign against the Soviet Union. The documents submitted by the Prosecution do not permit establishment of that assumption. To begin with, this is contradicted by the fact that as early as June 1940, the defendant Hess had already decided on the flight; in other words, at a time when no one in Germany thought of a campaign against the Soviet Union. On the contrary, from the letter which the defendant Hess left behind and which was handed to Adolf Hitler at a time when

Hess had already landed in England, it becomes perfectly clear that Hess had no knowledge of the imminent campaign against the Soviet Union. In this letter the defendant Hess did not state by a single word—and this is established by testimony of the witness Fath—that the purpose of his flight was to cover Germany's rear for the forthcoming campaign against the Soviets. In that letter Hess did not mention the Soviet Union by a single word. There is reason for the probability which almost amounts to certainty, that if Hess had had knowledge of the proposed attack and if he had intended to combine with his flight the intention which the Prosecution now claims, Hess would have dealt with that question. In this connection I should like to refer to the Exhibit USA 875, 3952–PS, which also clearly shows that Hess had no knowledge of the campaign against the Soviet Union.

But even if Hess had had definite knowledge of the proposed campaign against the Soviet Union, this would not oppose the reason for penal acquittal in regard to the later period of time. Evidence has shown that in ordering the attack against the Soviet Union, the idea of anticipating a forthcoming attack on the part of the Soviets was by no means last in Hitler's mind. I refer to the report of the American General, which I have already read.

It is immaterial within the framework of the question to be examined here, whether such an attack was actually planned by Soviet Russia and would have taken place. Statements made by the defendant Jodl while in the witness box make this appear very likely, if not even certain. The point at issue here is merely that on the basis of the reports he had before him, Hitler himself was of that opinion. Had the defendant Rudolf Hess been successful in creating in England the prerequisites for armistice and peace negotiations, the political and military situation in Europe would have been so fundamentally changed that under these modified conditions an attack by the Soviet Union on Germany would have appeared most unlikely, and the apprehensions entertained by Hitler would have become untenable. The attempt made by the defendant Hess by his flight to England would also maintain its character whereby penal acquittal for all that happened after May 10, 1941, incidental to the execution of the common plot claimed by the prosecution is in order, if it were argued that it was not the fear of an imminent Soviet attack which prompted Hitler in his decision, but economic pressure resulting from the situation in which Germany found herself as a result of failure of the invasion of England. With the end of the war, this embarrassing economic situation would also have come to an end; at least it would not have been so stringent.

In conclusion it may be said: In undertaking his flight to England, and considering the intentions therein bound up with the reestablishment of peace, the defendant Hess made an attempt by which he pledged his entire personality to bring about the reestablishment of peace, an attempt which obviously sprang from the desire to avert further bloodshed at all costs. Applying principles of law such as derived from the penal codes of all nations, and especially applying German penal law, which if doubt arises will be taken as a basis for this question, the conclusion must be accepted that the defendant Hess's responsibility according to penal law will in any case be confined to deeds which took place prior to the flight to England.

Your Honors, the past war has brought misery upon the whole of mankind to an almost unimaginable extent; it has made Europe into a continent bleeding from a thousand wounds and left Germany a field of ruins. It appears certain that at the present stage of modern technique, humanity would not survive another world war. This would, as far as it is humanly possible to foresee, utterly annihilate civilization, which has already suffered to an inexpressible extent in this war. It appears therefore only too understandable when under these circumstances the endeavor should be made in the name of humanity struggling for its existence, to leave no method untried from the legal standpoint as well, to prevent the repetition of such a catastrophe.

There can, however, be no doubt that the law, whatever its strength may be in social life, can only play a subordinate part in the prevention of war. This applies with limitation as long as the community of nations is composed of sovereign states acknowledging no legal order derived from a superior authority and as long as no procedure and no organization exists capable, by virtue of its own authoritative power, of legally limiting legitimate claims of nations and bringing them into harmony with one another. As long as these conditions are not fulfilled, justice cannot be in the domain of international relations the regulating force it is in national life where it rests simply upon the power of the state which is behind it. Tempting as it may be to try to establish at least an improved and more powerful international law on the ruins left us by the past world war, such an attempt must be doomed to failure from the outset if it does not coincide with a comprehensive new order of all international relations and if international law is not simultaneously an essential component of an order which guarantees the indispensable rights of all nations and which assures in particular the satisfaction of the legitimate claims of every nation to a proportionate share of the material wealth of the world. The Charter of the International Military Tribunal is undoubtedly not part of such a general new order. It was enacted by the victorious powers for a limited duration, namely as a foundation for a criminal trial against the statesmen, military commanders and economic leaders of the defeated Axis powers. The content of the London Agreement makes the Charter of the International Military Tribunal, which constitutes an essential part of the agreement, appear as a legislative measure ad hoc by reason of the very time limit of one year stipulated by Article 7. As a matter of fact, it can scarcely remain doubtful that essential parts of the Charter are not in accordance with the general sentiment of all members of the international legal community and that they do not therefore constitute a really valid international code. Under these circumstances, a conviction for a crime against the peace and for participation in a common plan to initiate a war of aggression could only take place at variance with the prevailing international law if the Tribunal decided, violating the principle nulla poena sine lege, upon a juridical extension of international law. Great as this temptation may be, its consequences would be incalculable. Not only a principle would be violated which is derived from the principles of the penal codes of all civilized nations and constitutes in particular an integral component of international law, namely that an act can be penalized only when its penal character has been juridically specified prior to the commission of the act; but above all, in view of the fact that in the present trial the jurisdiction on counts I and II of the Indictment excludes the competence of the Tribunal so far, the violation of the principle nulla poena sine lege, combined with these special circumstances, must put the concept of law in doubt altogether.

If the way for a genuine progress of international legislation is not to be obstructed, then the actual international code which is now valid must exclusively be considered as the legal foundation for the judgment of this Tribunal.

2. FINAL PLEA by Rudolf Hess

Some of my comrades here can confirm the fact that at the beginning of the proceedings I predicted the following:

First of all, that witnesses would appear who, under oath, would make untrue statements and, at the same time, these witnesses could create an absolutely reliable impression and could enjoy the best possible reputation.

Point 2: It was to be reckoned with that the Court would receive affidavits containing untrue statements.

Point 3: The defendants would, with a few German witnesses, hear of astonishing facts.

Point 4: Some of the defendants would act rather strangely: They would make shameless utterances about the Fuehrer; they would incriminate their own people; they would incriminate each other wrongly, in part; and perhaps they would even incriminate themselves, and also wrongly.

All of these predictions have come true. As far as the witnesses and affidavits are concerned, in dozens of cases the defendants, under unequivocal oath, were confronted with statements made under oath.

I should only like to mention the name Messersmith who, for instance, knew the Great Admiral at Berlin and allegedly claims to have talked with him in Berlin when the Admiral was in the Indian Ocean or in the Pacific Ocean, to my knowledge.

These predictions of mine were not only made here at the beginning of these proceedings, but rather months before the beginning of these proceedings in England. And, among other things, I made these predictions to the physician who was with me, Dr. Jones, and at the same time I set these predictions down in writing.

I should like to base my predictions at some happenings in countries outside of Germany. In this connection I should like to emphasize right here and now, that, if I mention these incidents I am convinced from the beginning that the governments involved knew nothing whatsoever of these happenings. Therefore, I do not wish to accuse these governments in any way.

In the years 1936 to 1938, in one of these countries, political proceedings or trials were taking place. These were characterized in such a way that the defendants were accusing each other in an astonishing way. In part they cited great numbers of crimes which they had committed or which they claimed to have committed. At the end, when death sentences were passed against them, they clapped their approval.

This happened quite to the astonishment of the world.

Some foreign reporters, press people, reported that one gained the impression that these defendants, through a means unknown up until that time, had been transported into an abnormal state of mind, and that was the reason for their behaviors, the reason they acted the way they did.

These incidents were recalled to my mind through a certain happening in England. It wasn't possible for me there to receive the reports on the proceedings at that time just the way I had not had them here, but here the various numbers of the newspapers "Voelkischer Beobachter" were at my disposal. When I perused these numbers—I got to the date of the 8th of March—there was a passage I found here in a report from Paris, under the date of the 7th of March 1938, it reads as follows: A large Paris newspaper "Le Jour" made revelations about the means which obviously were viewed in these trials. This is a rather mysterious means. I quote literally: this is the report: "This means affords the possibility that the victims are permitted to act and to speak according to the orders given them," and I emphasize and should like to refer to the fact that in this report of "Le Jour" it does not only say that they can be made to speak according to orders given them, but that they can be made to act according to the orders given them. The latter point is of tremendous importance in connection with the actions which had not been explained, of the personnel of the German concentration camps, including the physicians and scientists who carried through these atrocious experiments on the inmates, incidents which normal human beings, especially physicians and scientists, could not possibly carry out. But it is of equally great significance as well, when we look at the actions of these people who, without doubt, gave the orders and directions for these atrocities in the concentration camps and who gave the order to shoot prisoners of war, and lynch-mob justice and others all the way up to the Fuehrer himself.

I should like to recall your attention to the fact that the witness Field Marshal Milch testified here that he had the impression that the Fuehrer during the last years was not quite normal mentally and a series of my comrades here quite independently of each other and without having any knowledge of the testimony which I am giving now, my comrades have told me that the facial expressions and the expression of the eyes of the Fuehrer in the last years contained something cruel and even had a tendency towards madness, and I can call the comrades involved by name.

I said before that a certain incident in England caused me to think of the reports of the earlier trials. My motive was that my surroundings during my internment acted towards me in an inexplicable way, in a way which would lead me to conclude that these people somehow were acting in a state of mind which was not normal. At the same time, these people of my surroundings, the people that surrounded me were exchanged from time to time, some of them who had been exchanged, and new people who came in, some of them had strange eyes. They were glassy eyes and they had a dreamy cast. The symptoms, however, lasted but a few days and then they created a completely normal impression. They could not be differentiated from completely normal human beings. Not only I noted these strange eyes but the doctor who attended me at that time, Dr. Jones-Johnston, a British military physician, a Scotsman. In the Spring of 1942 I had a visitor, a visitor who quite obviously wanted to be nice to me and acted in a strange way towards me. This visitor had these strange eyes. Afterwards, Dr. Johnston asked me just what my opinion was of this visitor. He told me, rather I told him, that I had had the impression that for some reason or other he was not quite normal mentally and Dr. Johnston, not quite the way I expected, protested but agreed with me and asked me whether these strange eyes had not come to my attention, these eyes that had a dreamy cast. Dr. Johnston did not suspect that he, himself, when he visited me, had the same eyes.

The essential point, however, is that in one of the reports which might still be found in the press archives these are the trials which took place in Moscow; in these reports, it said that the defendants had strange eyes but they had glassy and dreamy eyes. I have already stated that I am convinced that the government involved knew nothing of these happenings, therefore, it would not be in the interest of the British Government, in my statements about that which I experienced in my internment, the outside world would be excluded; for in that way the impression would arise as if, in fact, something was to be concealed or in fact the British Government had been involved or had her fingers in the pie. On the contrary, I am convinced that the Government of Churchill, as well as the present government, gave directions that I was to be treated fairly and according to the rules of the Geneva Convention. I fully realize that everything that I should like to state, dealing with the treatment which I received, on first glance will be incredible but to my good luck, at an earlier period of time, prison guards treated the inmates which, first of all, at first glance, seemed quite incredible when the first rumors of this treatment reached the world. These rumors were to the effect that quite deliberately, prisoners had been permitted to starve to death, that the sparse food which they had been given, among other things, had been mixed with ground glass; that the physicians who attended the prisoners who had been taken ill as a result of this, that the prisoners had received harmful medicants and harmful medicines and in that way the number of victims was increased that way. For a fact, all of these rumors afterwards came out to be true. It is an historical fact that a monument was erected for 26,000 or so poor women and children who, in British concentration camps, who died in British concentration camps, in the most part died of hunger. Many Englishmen, among others Lloyd George, at that time objected to these happenings in British concentration camps and protested most emphatically, and an English eyewitness, Miss Emily Hopfords, objected; however, at that time, the world stood before the riddle which could not be explained, for the same riddle which the world is confronted with today, relating to the happenings in German concentration camps. At that time, the British people stood before a riddle which could not be solved and the same riddle which confronts the German people today in connection with the happenings in German concentration camps, even the British Government itself, at that time, as far as the incidents in the South African concentration camps are concerned, the British Government found herself confronted with the riddle. The same enigma which faces today the members of the British Government and the other defendants in this trial and the other trials, as far as the incidents in German concentration camps were concerned.

Of course, it would be of the utmost importance that that which I had to say about the incident, during my own arrest and incarceration in England, that I should like to make these statements under oath; however, it was quite impossible for me to bring my defense counsel to the point where he would declare himself willing to put these questions to me and in the same way, it was impossible for me to set out another defense counsel to put these questions to me, but it is of the utmost significance that that which I am saying has been said under oath and under oath I should like to state that now I swear by God the Almighty and Omniscient, that I am saying the pure truth, that I shall leave out nothing and add nothing. I should like to ask the High Tribunal, therefore, to consider everything which I will say from now on as being under my oath and I should like to interpolate regarding my oath that I am not a church person. I had no inner-relationship to the churches, but I am a deeply religious person. I am convinced that my belief in God is stronger than that of most other peoples and there I ask the High Tribunal to evaluate these things which I am stating under oath and calling upon God as my witness.

[The President of the Tribunal here cut off this line of discourse, reminding Hess that he had previously rejected an opportunity to testify on his own behalf under oath.—Ed.]

Those statements which my defense counsel made in my name before the High Tribunal I let rest because of the sentence, and for history and for my people. That is the only thing which counts with me. I am not defending myself against my accusers, whom I deny the right to accuse me and my fellow countrymen. I will not deal with accusations which concern things which are purely German matters and therefore are of no concern to foreigners. I am not protesting against statements which are directed at attacking my honor or the honor of the German people. I consider such accusations made against me by the enemy as a sign of honor.

It was my pleasure that many years of my life were spent in working under the greatest sun which my people produced in its history of 1,000 years. Even if I could, I would not want to erase this period of time from my life. I am happy to know that I have done my duty to my country and my people, and my duty as a German, as a National Socialist, and as a loyal follower of my Fuehrer. I do not regret anything.

If I were once more at the beginning, I should act once more the way I did act, even if I knew that at the end I should meet death on a bonfire. No matter what human beings might do, some day I shall be before the judgment seat of the Almighty. I shall be responsible to him, and I know he will call me innocent.

3. AFFIDAVIT of Friedrich Gaus and Secret Additional Protocol

[The following documents were offered in evidence as part of Hess' case and are published here because of their unique historic interest. The former was admitted, the latter rejected by the Tribunal.—Ed.]

Instructed as to the consequences of making a false sworn statement, I declare for the purpose of submittal to the International Military Tribunal in Nurnberg under oath the following, after having been requested to do so by Attorney at Law, Dr. Alfred Seidl, and it has been pointed out to me by him that according to the rules of procedure of this Military Tribunal, I, as a witness, am in duty bound to make such an affidavit as well as verbal testimony under oath.

I. Personal Data: My name is Friedrich Gaus, born on 26 February 1881 in Mahlum, District of Gandersheim, Evangelical-Lutheran religion, Dr. of Law, until the end of the war legal advisor, at the Foreign Office in Berlin and that finally with the title of "Ambassador for special duty" [Botschafter zur besonderen Verwendung]:

II. Facts: The preliminary history and the course of the negotiations for the political treaty of the Reich Government [Reichsregierung] with the Soviet Government in the fall of 1939 about which I, as a witness, have been asked by Attorney Dr. Alfred Seidl, as far as I personally participated as legal advisor, and as far as I remember at present, may be described as follows:

1. In the early summer of 1939—it must have been in the last half of June—the Reich Minister for Foreign Affairs at that time, von Ribbentrop, asked the then Secretary of State of the Foreign Office, von Weiszaecker, and me, to come to his estate of Sonneburg near Freienwalde on the Oder, and told us that Adolf Hitler

had been considering for some time making an attempt to create more tolerable relations between Germany and the Soviet Union. For this reason, as we probably had noticed already, for some time the extremely sharp controversy of the German press against the Soviet Union has been greatly toned down. An attempt was first of all to be made to sound the Soviet government by ordinary diplomatic methods by a simple question to the point, in order to ascertain whether the latter would agree to hold a practical conversation with the Reich Government. If so, extensive political discussions could be entered on after such a conversation in order to see whether a modus vivendi for the two countries could be brought about. If I remember correctly, the first subject of conversation was to be the not very important question of the consular representation of the Soviet Union in Prague. Herr von Ribbentrop gave the order to the Secretary of State and me to draft appropriate instructions for the German ambassador in Moscow, for which he also gave a series of detailed directions. The Secretary of State and I then immediately dictated in Sonneburg an appropriate draft, which was then changed by Herr von Ribbentrop at various points, and what the latter wanted to submit to Hitler for approval. But I heard shortly afterwards—I no longer remember whether it was from the Reich Foreign Minister himself or from the Secretary of State—that the instructions dictated by us in Sonneburg, were not sent because Hitler found them "too plain-spoken." For the time being, I did not learn anything more about the intentions of making a change in German-Russian relations.

2. At the end of June or the beginning of July, I went for a holiday to Garmisch-Partenkirchen, however, already toward the middle of July I was called by the Reich Foreign Minister to his summer residence at Fuschl in the vicinity of Salzburg for a special official reason, not connected with Russia, and had to remain until further notice at the disposal of the Reich Foreign Minister in Salzburg. After some time, Herr von Ribbentrop gave me one day in Fuschl, to my surprise, a document to read which contained the draft of a special message from the Reich Government to the Soviet government, and which ended in the proposal to begin negotiations for a political treaty. After introductory statements about the development of German-Russian relations hitherto and the contrast in the systems of the two states, the idea was emphasized that the interests of the two states lay very close to each other but did not overlap. I did not learn by whom his draft was written; judging from its style, it did not originate, or at least not alone, from the pen of the Reich Foreign Minister. The telegram to the German ambassador in Moscow to deliver the message was sent, and

not long afterwards the answer to the Soviet government arrived, which did not reject in principle the idea of placing German-Russian relations on a new basis, but stated that before the start of direct negotiations, longer examination and diplomatic preparation were required. Very quickly after, a second message was sent to Moscow in which the urgent German desire for the immediate start of negotiations was expressed. I also did not learn who was the author of this second German message. In this second message, but maybe already in the first one, the early sending of the Reich Foreign Minister to Moscow was offered for the purpose of starting political discussions. After that—I believe it was on 21 August—the content of the Soviet government arrived which, as I was able to observe personally by chance, caused great joy to Hitler and his entourage. If my memory does not deceive me, the two German messages had the outward form of a direct personal communication from Hitler to Stalin, and the preparatory correspondence was limited to the two exchanges of these messages.

3. On 23 August toward noon, the plane of the Reich Foreign Minister whom I had to accompany as legal advisor because of the planned treaty negotiations, arrived in Moscow. In the afternoon of the same day, the first conversation between Herr von Ribbentrop and Stalin took place in which on the German side besides the Reich Foreign Minister, only Botschaftsrat Hilger as interpreter and perhaps also ambassador Count Schulenburg participated. I myself, however, did not. The Reich Foreign Minister returned from this lengthy conversation very satisfied and said in effect that it was as good as certain that the agreements, which the Germans had endeavored to obtain, would be concluded. The continuation of the discussions, during which the documents to be signed were to be thoroughly discussed and completed, was contemplated for the later evening. I participated in this second conversation personally, also the ambassador Count Schulenburg and Botschaftsrat Hilger. On the part of the Russians, the negotiations were led by Messrs. Stalin and Molotov who were assisted by Mr. Pavlov as interpreter. Rapidly and without difficulty the text of the German-Soviet Non-Aggression Pact was agreed upon. Herr von Ribbentrop had personally added to the preamble of the draft of the treaty drawn up by me a rather extensive change concerning the friendly form of German-Russian relations, which Mr. Stalin objected to with the remark that the Soviet government, after having had "buckets of swipes" thrown over it by the National Socialist Reich Government for 6 years, could not all of a sudden come out into the open with German-Russian assurances of friendship. The passage of the preamble concerned was then deleted or

changed. Besides the Non-Aggression Pact, a special secret document was discussed for a long time which, as far as I can remember, was given the designation "Secret Protocol" or "Secret Supplementary Protocol", and the contents of which amounted to a limitation of the spheres of interests of both parties in the European territories situated between the two states. I no longer know whether the expression "spheres of interests" or other expressions were used. In this document, Germany declared herself disinterested politically in Latvia, Estonia and Finland, on the other hand considered Lithuania within her sphere of interest. With reference to the political disinterest of Germany in the two Baltic countries mentioned, it came at first to a controversy insofar as the Reich Foreign Minister, by reason of his instructions, wanted a certain part of the Baltic territories exempted, which however was not agreed to by the Soviet side, especially because of the ice-free harbors located in just that part of the territory. Because of this point, which obviously had already been discussed in the first conversation, the Reich Foreign Minister applied for a telephone connection with Hitler which did not take place until during the second discussion and during which he was then authorized by Hitler in a direct conversation with him to accept the Soviet point of view. A demarcation line was established for the Polish territory; I do not remember whether it was exactly drawn on a map appended to the document, or whether it was only described in the document in words. In addition, an agreement was made with regard to Poland, the approximate contents of which were that the two powers would act in mutual agreement in the final settlement of the questions concerning that country. However, it is possible that this latter agreement concerning Poland was only made at the time of the later changes of the secret document mentioned under No. 5 below. As to the Balkan countries, it was confirmed that Germany only had economic interests there. The Non-Aggression Pact and the secret document were signed the same night at a rather advanced hour.

4. Supplementing the above statements I add to No. 3, asked about this point especially, that Herr von Ribbentrop, during a light meal while the final copies of the documents were being made, related in the course of conversation that a public speech by Stalin which he made in the spring, contained a sentence which, although Germany was not mentioned in it, was interpreted by Hitler to mean that Mr. Stalin wanted to imply that the Soviet government considered it possible and desirable to reach a better understanding with Germany as well. Mr. Stalin made a short remark in reply to that which the interpreter Pavlov translated as: "That was the

intention." In this connection, Herr von Ribbentrop mentioned also that a short time ago Hitler had a motion picture shown to him which had been taken during one of the larger public celebrations in Moscow, and that he, Hitler found this film with the Soviet personalities appearing therein to be "very congenial". In addition, it deserves to be mentioned, since I have been asked about it, that during those conversations as well as during the actual negotiations, the Reich Foreign Minister regulated his words in such a manner that he let a warlike conflict of Germany with Poland appear not as a matter already finally decided on, but only as an imminent possibility. No statements which could have included the approval or encouragement for such a conflict, were made by the Soviet statesmen on this point. Rather, the Soviet representatives limited themselves in this respect simply to taking cognizance of the explanations of the German representatives.

5. During the negotiations concerning the second German-Soviet political treaty, which took place about a month later, the secret document, mentioned above under No. 3, in accordance with a suggestion already previously communicated to Berlin by the Soviet government was altered to the extent that Lithuania as well, with the exception of a small "corner" bordering on East Prussia, was taken out of the German sphere of interest, but in place of that, however, the demarcation line on Polish territory was placed further to the East. In later negotiations carried on through diplomatic channels, as far as I remember during the end of 1940 or the beginning of 1941, this "Lithuanian corner" was also subsequently relinquished on the part of Germany.

Nurnberg 15 March 1946 [s] FRIEDRICH GAUS

RU/3

Secret Additional Protocol—Russo-German Non-Aggression Pact

On the occasion of the signing of the non-aggression pact between Germany and the USSR the signatory delegates of the two parties have discussed in a strictly confidential meeting the question of the limits of each party's sphere of influence in Eastern Europe. This discussion has led to the following conclusions:

1. In the event of a territorial political change in the area of the Baltic states (Finland, Estonia, Latvia, Lithuania) the northern border of Lithuania forms at the same time the demarcation of the spheres of interest of Germany and the USSR. At the same time Lithuania's right to the area of Vilna is hereby recognized by both parties.

2. In the event of a territorial political change in the territory belonging to the Polish state the spheres of interest of Germany

and the USSR shall be divided roughly by the line of the rivers Narew, Vistula, and San.

The question, whether the interest of the two parties desires the maintaining of an independent Polish state and what the borders of this state would be can only be cleared up as a result of further political developments.

In any case the two governments will solve these problems by way of friendly negotiation.

3. Regarding South East Europe the USSR stresses her interest in Besserabia. Complete political disinterest regarding this area is stated on the part of Germany.

4. This protocol will be treated by both parties as strictly secret.

MOSCOW, 23rd August 1939

For the German Government
[signed] RIBBENTROP
Plenipotentiary of the government of the USSR
[signed] V. MOLOTOV

V. JOACHIM VON RIBBENTROP

1. FINAL ARGUMENT by Dr. Martin Horn, Defense Counsel

Introduction

"All great repercussions of history of the world and especially in modern Europe have at the same time been wars and revolutions."

We are standing in the midst of such a repercussion. It absolutely is not concluded as yet. To select single events in order to render judicial judgment is not only almost impossible, but entails the danger of too early a verdict. Make no mistake about it.

Here we do not judge a local crisis whose causes are limited to a certain part of Europe. We have to form a judgment about a catastrophe which touches the deepest roots of our civilization.

The prosecution has laid down strict measures in judging certain national and international events. Germany is much interested in the development of the idea of the law if its use leads to a betterment of international morals. This court has the high task, not only to decide about certain defendants and uncover the causes of the present catastrophe, but at the same time it will create norms which are expected to be adopted universally.

No law should be created that is only applied to the weak. Otherwise we should risk the danger that again all political efforts are directed toward ability for total resistance and thereby make war still more pitiless than the one about which judgment is to be rendered here.

In reference to these basic thoughts I beg to present to the Tribunal the case which I represent.

H. von Ribbentrop is being considered among the conspirators as the man mainly responsible for the foreign policy and diplomatic side of an alleged conspiracy, which is supposed to have had as its goal the preparation and execution of aggressive wars. It is my task to find out from the evidence when an attack in the meaning of international law is prevalent, and in which cases aggressive wars were conducted.

The term aggression follows not only the proposed formal judicial definition by the American and British prosecutors, but has, beyond all, a basis in realities.

Only the knowledge of these premises permits the adoption of an attitude which will serve as a basis for the decision of the court. I am therefore deferring the discussion of the problematic aspects of aggression and aggressive wars till I have presented to the court the evidence for the valuation of German foreign policy and the participation in it by H. von Ribbentrop.

As the Tribunal intends to consider the matter in the light of criminal law, I shall examine especially, to what extent H. von Ribbentrop checked or promoted the decisions concerning foreign policy during the time of his political activity.

The Foreign Policy of Ribbentrop as Ambassador and Foreign Minister 1935–1938

Mr. von Ribbentrop's first step into the world of the balancing of interests and therefore of the international game of power was successfully taken when he in 1935 concluded the naval agreement between Germany and England. The circumstances under which this treaty came to life are as significant for the political problems of those years as they are characteristic for judging the personality of von Ribbentrop and his further political development. This treaty—as it is known in informed quarters—came about under exclusion of the official German diplomacy. The then German Ambassador in London, von Hoesch, and the Wilhelmstrasse were very skeptical toward this project. Both Hoesch and the Wilhelmstrasse did not believe that England was inclined to conclude such a treaty, which contradicted the terms of part V of the Versailles Treaty as well as her previous attitude displayed at the different disarmament conferences. Furthermore they did not believe that such an agreement could materialize a few weeks after the Council of the League of Nations had declared the restoration of German military sovereignty as a breach of German obligations, and England, France and Italy had met at Stresa in order to counteract this German step. They did by no means believe that a successful conclusion of such a far reaching treaty with its fundamental significance could be achieved by an outsider like Mr. von Ribbentrop.

The consequences of concluding this treaty were just as significant as far reaching. The authority of Mr. von Ribbentrop who came from the party rose in Hitler's eyes. However, the relationship between Mr. von Ribbentrop and the conservative diplomatic corps became more and more difficult. This acting ambassador (Titularbotschafter) who had managed to acquire Hitler's confidence was distrusted because his activity could not be controlled by the Foreign Office.

From the conclusion of the naval agreement on, Hitler began to see in Mr. von Ribbentrop the man who could help him in the fulfillment of his pet wish—and, we may say, of that of the German people—to bring about a general political alliance with England. The tendency to realizing these intentions originated in real as well as ideal motives.

The real motive can be condensed into short consideration, that it is the bad luck of our nation and of all of Europe that Germany and England were never able to understand each other, in spite of serious attempts of both countries during the last 50 years.

The ideal motives rested in Hitler's undisputable preference for many approved internal institutions of the empire.

Politically the naval agreement represented the first important break with the Versailles policy which was sanctioned by England with the final approval by France. And thus the first practically useful armament limitations were accomplished after many years of fruitless negotiations.

With all these factors a generally favorable political atmosphere was created at the same time. The naval agreement and its effects may also have been the reason for Hitler to appoint Herr von Ribbentrop Ambassador to the Court of St. James the following year, after the death of Hoesch.

As surprisingly fast as Herr von Ribbentrop succeeded in closing the naval agreement, as little success had he in offering a general alliance to England. Was it the fault of Herr von Ribbentrop's diplomacy or the basic difference of interests?

He who knows the Anglo-Saxon psychology knows that it is not advisable to attack these people at once with proposals and requests. If at the first moment one may especially from the German side recognize many mutual characteristics in the British, still on close contact one will note profound differences. Both root in a different soil. Their spiritual field is watered by various streams. The deeper the Germans and the British go, the greater will be the proof of the difference of their faith and their intellect. The deeper the British and the French penetrate into the nature of the other, the more mutual features they will find. Common political interests in the past 50 years have deepened these mutual features between the British and the French.

In the course of modern history England always had the need for an alliance with a continental military power and searched and found satisfaction of this interest, according to the standpoint of British aims, sometimes in Vienna, sometimes in Berlin, and from the beginning of the 20th century, in Paris.

Even at the time of Herr von Ribbentrop's activity as an ambassador, England's interest did not require a deviation from this line. To this was added the principal British attitude that Great Britain did not wish to commit herself on the continent. One was able to recognize from the Thames the complications slumbering under the surface of the continent. Added to this was the fact that authoritative men in the Foreign Office thought still too much in the political terms of the end of the 19th and beginning of the 20th century and this attitude was still, now as then, governed by leaning towards France.

The voices of those who supported a closer approach toward Germany were negligible, their political power inferior to that of the opposition. To this were added the difficulties which resulted for Herr von Ribbentrop from Germany's participation in the non-interference committee, which at that time met in London in order to keep the powers out of the Spanish civil war.

The prosecution raised the question of how Herr von Ribbentrop regarded the German-British attitude on his departure as an Ambassador from London. The answer to this will best be furnished by document TC–75, which contains the view of Herr von Ribbentrop about the then prevailing situation of Germany with regard to foreign politics and the future possibility for shaping German-British relations.

Herr von Ribbentrop presupposes that Germany does not plan to be bound by the status-quo in Central Europe. He entertains the conviction that the implementation of these objectives of foreign politics will by force lead Germany and England "into different camps."

For this case he advises to strive toward a constellation of alliances, loose though at first, with powers of equal interests (Italy and Japan). Through this policy he hopes to bind England at the danger points of her Empire, still to keep open the possibility of an understanding with Germany.

Herr von Ribbentrop then turns to the question of Austria and the Sudetenland. According to his conviction then prevailing, England will not in both these questions give her consent to a modification of the status-quo but might be forced through the power of circumstances to tolerate a solution of these questions.

In view of vital French interests a change of the status-quo in the East will, however, cause England always to become an opponent of Germany in arguments of such nature. Herr von Ribbentrop upheld this interpretation not only in 1938 when this document was penned, but contrary to the assertions of the prosecution warned Hitler of this danger even before and at the outbreak of the second World War.

From this document follows also that Herr von Ribbentrop did not, as was asserted here, represent the British toward Hitler as a degenerate nation, but he says in this document quite clearly that England would be a hard and keen opponent to the pursuance of German interests in central Europe.

These interpretations of Germany's attitude in foreign politics at that time, as expressed in TC–75, evidently agreed with Hitler's idea inasmuch as in the course of the Fritsch crisis Herr von Ribbentrop took over the foreign ministry in place of the resigning Herr von Neurath.

According to Herr von Ribbentrop's statements, Hitler asked him upon entering his office, to assist him in solving four problems. These consisted in the Austrian, the Sudeten-German, the Memel as well as in the Danzig and Corridor question. As shown by the evidence this was not a secretive understanding which was arrived at by two statesmen.

The Party program contains, in point 3, the demand for revision of the peace treaties of 1919. In a number of speeches Hitler repeatedly pointed to the necessity of fulfilling these German demands. Reich Marshal Goering testified here that, in November 1937, he explained to Lord Halifax the necessity of solving these questions and said that they are an integral part of German foreign politics. These goals he also presented openly to the French Minister Bonnet. Herr von Ribbentrop therefore gave his principal support to goals, which were known, and which resulted, of necessity from the dynamics, at that time prevailing in central Europe on account of the recuperation of the Reich.

How far the freedom or restriction of action of Herr von Ribbentrop as a Minister reached in the solution of these questions, I shall explain in connection with my remarks on the participation in the conspiracy of which the defendant is accused. Only that much may be said here, that as was proven by evidence, with the dismissal of Freiherr von Neurath the concentration in Hitler's hands of the decisive authority also in the field of foreign politics had found its conclusion. Herr von Neurath was the last Foreign Minister who, at first as a Foreign Minister had managed to maintain a decisive influence on foreign politics under the regime of National Socialism, which in time with the increasing power of the regime, he had to surrender to Hitler's striving totality, more and more.

In Herr von Ribbentrop, a man now became Foreign Minister whom Hitler had elected after his own taste.

Besides, of all forms of state law and jurisdiction, government without a doubt has a strong component in the purely personal relations among the rulers. Seen from this point of view it is necessary for the understanding of certain actions and history to look into the relations between Hitler and Herr von Ribbentrop.

Herr von Ribbentrop as a well-to-do man from the nationalistic camp, saw in Hitler and in his party, efforts which corresponded with his own ideas and feelings. Herr von Ribbentrop's ideas about the foreign countries visited by him aroused Hitler's interest. Hitler's personality and political convictions formed in Herr von Ribbentrop a form of loyalty, the final explanation of which one can perhaps find in the effects of the power of suggestion and hypnosis. We do not wish to conceal that not only Herr von Ribbentrop but also an enormous number of people on this side as well as on the other side of the border fell victim to this power.

What is in this court-room to be conceived in the forms of law, will find its final explanation only from the point of view of the effect on the masses and in the psychology, to say nothing of the pathological form of these phenomena. This task may be left to the sciences concerned.

As an attorney—and only as such do I have to evaluate the results of the evidence—I may, with the permission of the Tribunal, present, after clarifying these facts, the role of Herr von Ribbentrop within the alleged conspiracy for the plotting of wars and acts of aggression under breach of contracts.

Ribbentrop's part in the annexation of Austria

Herr von Ribbentrop had not yet been Foreign Minister for 10 days when he was called upon by Hitler to participate in the conference with the Austrian Bundeskanzler and his Foreign Minister on 12 and 13 February 1938 in Berchtesgaden. Evidence presented in court has confirmed the fact, that questions especially involving Austria were exclusively within the domain of Hitler. The then Ambassador von Papen reported directly to the Head of the State. Herr von Ribbentrop had no influence whatever upon activities of the party in Austria as well as in the southeastern territory. My client alleges to have been informed only rarely and not officially about its activities there.

The former Austrian Foreign Minister, Dr. Guido Schmidt, deposed that Herr v. Ribbentrop did not participate in the decisive conference between Hitler and Schuschnigg. During the rest of the conference he did not conduct himself in the Hitlerian style and created the impression of not being informed on the subject, which was probably due to his late activity in London and his being appointed Foreign Minister only recently. From this unobjectionable conduct of v. Ribbentrop the prosecution deducted that Hitler and Ribbentrop had agreed upon a premeditated maneuver. It sees in H.v. Ribbentrop's conduct that, which is typically characterised as "double talk". Must not the undisputable data and facts as regards H.v. Ribbentrop, the impression of the witness Schmidt hence resulting, my portrayal of Ribbentrop's position as minister, his lack of information on the long planned preparations with respect to Norway and Denmark and other undeniably proofed facts raise the question whether H.v. Ribbentrop participated in decisions of foreign policy to a far lesser degree as is contended by the prosecution?

The hearing of evidence proves conclusively that, at least as far as Austria's annexation is concerned, he played no important part. For him Austria remained a country mutilated by "St. Germain", a country which, according to healthy principles could hardly exist and which once shared a common destiny in history with Greater Germany. The National Socialists were not the first to awaken Austria to the thought of a union with Germany. This thought had ripened, since in the German element of the Habsburg Monarchy the revolution of 1848 aimed at a democratic and Greater Germany. It was fought for by the Social-Democrats for ideological and realistic reasons after the downfall of this monarchy. It was this very democracy that looked at the Weimar state as their spiritual offspring. The economic distress resulting from the destruction of the Danube area as an economic entity nurtured the thought of a union with the Reich which was economically better off. The National Socialists were in a position to utilize this fostering soil. In any event, presuppositions for a union with Germany existed, when assistance of Austria by

Italy ceased, through closer relations of the former towards Germany by reason of the Abyssinian conflict. Further reasons that contributed to and justified the union will be specifically stated by my colleague Dr. Steinbauer.

Reichsmarshal Goering testified that, as interpreted in the narrow sense of the law of reunion of 13 March 1938, which was signed also by H.v. Ribbentrop, the union did not even correspond with the intentions of Hitler but was arrived at by Goering himself.

As further violation of treaties the prosecution denotes the violation of Article 80 of the Treaty of Versailles and the corresponding articles of the Treaty of St. Germain as well as the violation of the treaty between Austria and Germany of 11 July 1936.

In justification of these violations one could point out that the provisions concerned constitute a violation of the basic right of self-determination. The outcome of the vote after the annexation at any rate clearly confirms the Austrian attitude at that time.

The clausula rebus sic stantibus could be considered as a further justification of violation. One could refer to the statement of Under Secretary Butler in the House of Commons who, upon questioning after the union asserted that England had given no special guarantee for the independence of Austria as undertaken in the Treaty of St. Germain.

These judicial evaluations would hardly do justice to the facts. Positive law always lags behind the ideal state of justice. Such is the case not only in laws governing internal relations but also in international law.

Events show that, if in the drawing up of treaties no provisions are contained for change of circumstances, history shatters them by revolution in order to rebuild them upon a new base.

Whether participation in such events can be legally evaluated is questionable. To general principles of the adaptability of justice to the might of facts I shall refer later on.

Ribbentrop's part in the Czechoslovakian Crisis

An Englishman asserted:

"We have to face the stubborn fact that Central Europe is populated by an almost solid block of 80 million people who are highly gifted, highly organized and who are conscious of these achievements in the highest degree. The majority of these people have the strong and evidently unexterminable desire to be united in one state".

This artificially split up block created by the Peace Treaty of 1919 was put in motion by the annexation of Austria and the racial theories of National Socialism. No attentive observer could fail to notice the effect of the annexation upon the neighboring states.

It is not my intention to take up the time of the Tribunal with the particulars of the then proceeding efforts by the various groups of Germans in the neighboring states for incorporation into the Reich. The facts which now have become history are only too well known. My task here is to examine whether these events are the results of a premeditated plan of an individual person or of a group of persons or whether a long and artificially stored up force assisted in accomplishing the objectives which were assigned to H.v.Ribbentrop by Hitler at the time of his appointment.

The Anschluss of Austria was the signal for the Sudeten German Party to force the Anschluss now on their part too. Herr von Ribbentrop had been accused by the prosecution that in his capacity as Foreign Minister he engaged in the creating of difficulties under the Sudeten-German Henlein. It further accuses him of having induced the Sudeten-German Party to increase their demands step by step instead of entering the Czechoslovak government, and in that way of having prevented a solution of the whole problem without having made the German Government appear as peace maker.

The document 3060–PS submitted by the prosecution shows just the contrary. It is true that H. v.Ribbentrop knew that the Anschluss efforts of the Sudeten-Germans received help from the party. But he had no influence on this party policy nor any thorough knowledge of it. With regard to the difficulties which had arisen with the Czech Government caused by the separation efforts of the Sudeten Germans and their partly uncontrollable policy, H. v.Ribbentrop found it necessary to take care of the realization of the Sudeten German aims within the limits of a responsible policy.

There was at first a short calming down of the foreign situation through the Munich Pact. It was complicated again only through the visit of Hacha in Berlin and the concomitant events, a step of Hitler's which was in this far-reaching form completely surprising to H.v.Ribbentrop.

As Reichsmarshal Goering has testified, Hitler, after the solution of Slovakia in spite of all warnings, decided upon setting up the Protectorate of Bohemia and Moravia. On the basis of the available material it might be difficult to ascertain the final reasons for Hitler's step. According to the testimony of the defendant Goering they sprang from Hitler's lasting fear that through an alliance of the Czech officer corps with Russia the situation in the South Eastern Territory could be complicated again. This and the resulting strategical and historical reasons might have induced Hitler to this step of 13 March 1939, which came as a surprise also to H. v. Ribbentrop.

This decision which is only understandable by Hitler's inclination for surprising decisions, brought a complete change of the German foreign policy.

Herr v. Ribbentrop had at that time with a warning demonstrated to Hitler the reaction of the Western powers, especially of England, which had to be expected as a result of this step.

Ribbentrop's role in the Polish crisis

The results manifested themselves immediately in the Danzig and Corridor question which had been discussed since October 1938. Whereas up to that time the Poles, because of the German policy since 1934 and the return of the Olsa territory, did not refuse discussions about this problem, the reaction to the setting up of the protectorate could be seen immediately at the end of March. England regarded the establishing of the protectorate as a violation of the Munich Pact and began consultations with a number of countries. At the same time Minister Beck, instead of coming once more to Berlin, went to London and returned from there with the assurance that England would resist any change of the status-quo in the East. This declaration was also given in the House of Commons after previous consultation with the French Government.

On 26 March 1939 the Polish Ambassador Lipske called at the Wilhelmstrasse and stated to Herr v. Ribbentrop that any continuation of the revision policy towards Poland—especially as they are concerned with a return of Danzig to the Reich, would mean war.

This made the Polish question into a European one. H. v. Ribbentrop told the Polish Ambassador at that time that Germany could not be satisfied with this decision. Only a clear return of Danzig and an extra-territorial connection with East Prussia could bring a final solution.

I submitted to the Tribunal in the form of documentary evidence a review of the now beginning course of the Polish crisis. I can therefore assume that the actual course of events is known, also inasmuch as they are connected with the annexation of the Memelland which was returned to the Reich through an agreement with Lithuania.

In order not to take up the time of the Tribunal unnecessarily, I confine myself to the pointing to the facts which are apt to clear the role of H. v. Ribbentrop.

The prosecution accuses H. v. Ribbentrop that during the Sudeten crisis and the setting up of the Protectorate of Bohemia and Moravia, he had lulled Poland by pretending friendly feelings. May I, in contradiction of this assertion, point out that the relations between Germany and Poland since the agreement of 1934 were good and even friendly, and that this attitude became of course even more favorable through the fact that Poland owed the acquisition of the Olsa territory to the German Foreign policy.

She had therefore every reason to harbor friendly feelings towards Germany without the necessity of a deceitful conduct on the part of H. v. Ribbentrop. As the evidence has shown H. v. Ribbentrop continued this friendly policy towards Poland even after the dissolution of Czechoslovakia as there was no reason to deviate from this attitude.

The prosecution further accuses H. v. Ribbentrop of having known that Hitler had already in spring 1939 been resolved to start a war against Poland and that Danzig served only as pretext for this conflict. It deduces this from the documents USA 27 and USA 30 (L–79, 1014–PS). They deal with the well-known speeches by Hitler on 23 May and 22 August 1939.

May I point out in the first place that H. v. Ribbentrop was not present at these conferences which were only for military personnel.

A number of key documents have been discussed in detail here. I only wish to name the best known such as the Hossbach document, the two Schmundt files and the aforementioned speeches. Quite a number of interpretations of these documents have been the subject of the testimony. People who knew Hitler stated that they were used to extravagant ideas from him in the form of sometimes repeating and surprising speeches and that in consideration of his peculiarities they did not take them seriously.

One can present in contrast to these documents quite a number of speeches in which Hitler asserted the contrary. One can object to that by saying that Hitler had always connected a certain purpose with his utterances. That is certainly true. But it is also true that even the few key documents, submitted as proof of the aggressive war, contain so many contradictions with regard to the aggressive intentions deduced from them that perhaps a critic judging retrospectively could recognize such intentions in accordance with the strict regulation for secrecy; the content of these documents were for that matter only known to those who took part in the conference. This makes it clear why Herr v. Ribbentrop learned to know about them only here in the courtroom.

The instructions concerning foreign policies which Hitler gave him at that time dealt solely with the re-incorporation (Rueckgliederung) of Danzig and the establishment of an extra-territorial road through the Corridor, in order to have a direct land-route to East Prussia. As the court may remember, the desirability of realizing these aims had already been mentioned by Hitler when he appointed Herr von Ribbentrop as Foreign Minister. This demand was historically just as justified, as the solution of the preceding incorporation of areas which were inhabited by Germans became inevitable in this case. The status of the purely German city of Danzig, which had been determined by the Treaty of Versailles in the course of the erection of a Polish State, had always been the cause of frictions between Germany and Poland. Poland had effected this solution at Versailles on the basis that it needed an outlet to the sea. For the same reason, yet against all ethnological needs, the Corridor was established. Already Clemenceau in his memorandum pointed to this artificial creation as a source of danger, especially due to the fact that the people united in this area had been separated through long years of bitter enmity. It was not difficult to foresee that, as result of this fact, the League of Nations and the International Court at The Hague would be occupied with other than current complaints against violations of the Agreement for Minorities.

The same cause gave rise to confiscation of German real estate on the largest scale up to 1 million hectar and the expulsion of far more than 1 million Germans in the course of 20 years. Not without reason had Lord d'Abernon spoken of the Danzig-Corridor-problem as of the "powder–barrel of Europe." If then efforts were made to solve this question, recognizing the Polish right for maintaining an outlet to the sea, such efforts were justified from the standpoint of history and common sense.

The evidence showed no basis whatever for the assumption that this question served as a pretense only, of which Herr v. Ribbentrop must have been aware. No evidence has been produced that Herr v. Ribbentrop was acquainted with Hitler's aims, which far exceeded these demands. Just as little has it been proved that Herr v. Ribbentrop before 1 September 1939—as has also been asserted by the prosecution—did all he possibly could to avoid peace with Poland, although he knew that a war with Poland would draw Great Britain and France into the conflict. The prosecution bases this statement on document TC–73. This involves a report of Lipski, the Polish Ambassador in Berlin, to his

Foreign Minister. The document contains nothing whatsoever to substantiate this assertion.

Moreover, I do not believe, that according to the result of the evidence, Lipski can be counted as classical witness. May I recall that it was Lipski who, during the decisive stage of negotiations before the outbreak of the war, remarked that he had not the least cause to be interested in notes or propositions from the German side. After a period of 5½ years as ambassador in Germany, he was very well acquainted with conditions there. He was convinced that in case of war unrest would break out in Germany, and that the Polish Army would march into Berlin victoriously.

According to the testimony of the witness Dahlerus it was exactly Lipski, who during the decisive discussion at the Polish Embassy created the impression with the Swede, that Poland was sabotaging every possibility for negotiations.

Further results of the evidence also speak against the above allegations of the prosecution. So for instance the fact that Herr v. Ribbentrop, knowing that the Polish-English Guarantee-Pact had been signed, by his intervention with Hitler caused the latter to recall the marching-orders for the Armed Forces, because, according to his conception, a conflict with Poland would also involve the Western Powers. This conception is identical witn the conclusions, Herr von Ribbentrop drew from his opinion of the European situation, voiced in the already mentioned document TC–75.

Ambassador Schmidt has testified here, that it was Herr v. Ribbentrop who on 25 August 1939, after the Hitler-Henderson meeting, sent him to Sir N. Henderson with the verbal communique presented as TC–72/69 in which the contents of Hitler's propositions were drawn up. With it Herr v. Ribbentrop combined the urgent request, at once and in person, to warmly recommend to the British Government Hitler's proposition. According to the English Blue Book, Sir N. Henderson could not refrain from calling these proposals exceptionally sensible and sincere. They did not represent the usual Hitler-proposals, but "proposals of the League of Nations."

Anyone studying the negotiations of the succeeding fateful days cannot deny that everything was done on the German side to get at least negotiations on a workable basis under way. The opposite side would not have it thus, because the decision had been made to take action this time. The good services of England ended with the breaking off of all mediation without having been able to bring Poland to the table of negotiations.

Herr v. Ribbentrop has been blamed for having practically defeated the purpose of the last decisive discussion with the British Ambassador Henderson by having read the German proposals to Poland so fast, contrary to all diplomatic custom and international courtesy, that Sir N. Henderson could not understand them, and, hence, could not pass them on. The interpreter for Ambassador Schmidt was present at this decisive discussion. He has testified here under oath that this statement is not true. One may consider Hitler's order to acquaint Sir N. Henderson only with the substance of the memorandum as unwise. The fact is that not only did Herr von Ribbentrop read the entire contents at a normal speed to the British Ambassador, but he also, by having the interpreter present, made it possible for Sir N. Henderson to become familiar with the entire contents and, moreover, to have explanations given on it. Besides, upon the initiative of Reichsmarshal Goering, it was transmitted to the British Embassy during the same night by dictation to the Counsellor of the Embassy Forbs. Thus the British Government should have been able to render the good services offered for opening negotiations based on positive propositions.

By reason of these facts here deposed, one must rightly doubt the allegation to be true, that the defendant had done everything, to avoid peace with Poland.

The Outbreak and Extension of the Second World-War

Causes of War

At the beginning of my defense speech I stressed that legal considerations concerning aggressive war are not possible without knowledge of the presuppositions leading to an armed conflict. Before I proceed to the legal aspects of the conflict with Poland, may I make some additional statements concerning the causes that led to the war.

The period between two world wars is characterized by the mutual reactions of those powers which were satisfied and those which were dissatisfied. It seems to be an inevitable law that, after great war shocks, the victorious states tend as far as possible towards the reestablishment of the pre-war status and pre-war mentality, whereas the conquered are forced to find a way out of the consequences of their defeat by new means and methods. That way the Holy Alliance came about after the Napoleonic wars, and under Metternich's leadership, using the legitimacy as an authorization, it tried to ignore the effects of the French Revolution.

What the Holy Alliance did not achieve the League of Nations did not succeed in either. Created in an atmosphere of fervent belief in human progress, it was quickly transformed into a tool of the saturated states. Every effort to "reinforce" the League of Nations meant a new bulwark for maintaining the status quo. Under the elegant diction of juridical proceedings power-politics continued. Besides, the obsession by the idea of "sécurité" soon deprived the newly created body of any breadth of freshness and life. In this fashion naturally a solution of the problems created by the end of the first world-war could never be founded. In international relations the interests of conservative powers content with the status quo and those of the revolutionary powers trying to do away with it were found to be in growing conflict. It could only be a question of time, when under these circumstances the political initiative would pass to the discontented powers. The formation of this front depended exclusively on the force of the revolutionary spirit, which crystallized in opposition to political complacency and longing for the past. On this fostering-soil grew the doctrines of National Socialism, Fascism, and Bolshevism obscure in many parts of their programs, elastic and incoherent in others. Their power of propaganda was based not so much on their programs but on the fact that they admittedly brought something new and that they did not exhort their followers to worship a political ideal that had failed in the past.

The economical crises of the post-war period, the controversies about reparations and the occupation of the Ruhr, the fact that the democratic governments were not capable of attaining anything for their peoples in need from the other democracies unavoidably led to test the doctrines which had not been tried out yet. The practical results of this revolution, as we experienced them in Germany after 1933, could, aside of the social program, only consist in abolishing the peace settlements of 1919, which were a classical example of the failure in understanding of the revolutionary character of a world crisis. These tasks were for this revolution no juridical questions but doctrines, exactly as it had already for a long time become a doctrine for the saturated states to keep up the status quo at all costs eventually at the costs of a new world war.

Only he who does not shut his eyes before these facts can judge the political crises of the past decade.

Every revolution has but two possibilities, either it meets so little resistance that eventually conservative tendencies develop and an alloy with the old order is formed, or the antagonistic forces are so strong that finally the revolution breaks due to its having oversharpened its own means and methods.

National Socialism went the second way which began so unbloody and, in parts, with a remarkable bias towards tradition. But it too could not escape the laws, inherent in history. The aims were too high for one generation, the revolutionary essence too strong. The successes in the beginning were stupefying. But they also caused a lack of criticism as to the methods and aims.

It would most probably have been achieved to all larger German groups in the Central European space, if, at the end—I mean in setting up the protectorate Bohemia and Moravia and in following up the Danzig corridor question—revolutionary speed and methods had not been carried to excess as a result of previous successes. No soberly judging person will deny the right to gain a solution in the Danzig corridor question, delicate as it was.

The prosecution wants it that, in reality, Danzig was but a pretext. Seen from the state of affairs in 1939 this cannot be proved. But it is sure that also the opposed party was concerned with other things but the keeping up of the status quo in the East. National Socialism, and with it in its newly gained strength the German Reich, had become such a danger in the eyes of the others, that after Prague one was determined to make any further German enterprise a "test case", wherever it should happen.

I have already said that the revolutionary process in Central Europe was caused in the first place by economical conditions of "Versailles". At Versailles on Germany was imposed a treaty of peace, of which it was well known, that the conquered could not comply with its economical provisions. Many things have been said here about the slogan "Lebensraum". I am convinced that this word would never have become a political program, if after the first World-War one would have given Germany the possibility to link up with the world markets instead of strangling her economically. By systematically cutting her off from all places where raw-products occurred in the world—all this because for "sécurité" reasons—one of course fed the tendency towards autarchy, the inevitable way out from the barring from the world markets and, at the same time, one allowed, as the economical situation became more aggravated, the cry for Lebensraum to fall on fertile soil.

So Stalin is right, when he says: "It would be erroneous to believe that the second World War came about in a haphazard way or resulted from faults of one or the other of the statesmen, though such faults were made without doubt. In reality the war resulted inevitably from the development of international economical and political forces based on modern monopolistic capitalism." (Stalin's speech on the eve of the Soviet elections in February 1946.)

Remarks Concerning World War II considered from the point of view of Illegal Attack.

Professor Jahrreiss has already thoroughly proved in his basic arguments concerning the legal and the actual signification of the Kellogg agreement that the defense cannot attach to this war prevention program the meaning given to it by the prosecution.[1]

It is true that war has already been previously declared an international crime, especially at the 8th League of Nations assembly of 1927; however, at preliminary conversations—and the fact has been proved by documents already submitted to the Court—it was agreed upon that this declaration does not make war a crime in any legal sense, but is rather the expression of a wish to prevent, for the future, international catastrophes on a World War I scale. Moreover, neither the US nor the USSR participated in the League of Nations resolution of 1927.

Any further projects of outlawry of war in the period between World Wars I and II remained mere projects—and the British prosecutor had to acknowledge this in the course of his significant argumentation—because practical politics could not follow these moral postulates.

All these experiments—and they are by no means few—clearly show that the problem of definition lies in the difficulty of condensing a political event, depending upon a host of components, into a juridical concept susceptible of covering any of the many-shaped cases occurring in fact. The failure to formulate a definition which could be used in international law has led to this, that instead of working out universal characteristics to be used in every single case, the designation of the aggressor has been left to the decision of an organ superior to the contending parties. In such a way, the question of defining the aggressor became the question, "quis judicavit", i. e., "who designates the aggressor." From this decision follows a new difficulty, "what is to be done against the aggressor?"

Previous to the attempt of settling in a general way the concept of aggression and the sanctions against the aggressor, political alliances determined the obligations of the parties to wage war. In order to improve this unsatisfactory, anarchic situation, the United States, under Secretary of State Bryan, took the initiative, in a series of separate treaties, to agree upon delays of respite, which were meant to postpone an outbreak of hostilities and to allow the passions to cool down.

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[1] Mr. Justice Jackson tries, in this connection, to refer to article 4 of the Weimar constitution of 1919. According to this article, universally acknowledged rules of international law are binding parts of German Reich law. With regard to the differences in juridical interpretation by the great powers of the Kellogg pact its interpretation by the prosecution cannot be considered as German Reich law. (Cf. Reich Supreme Court decisions in civil cases, vol.103, p.276. Anschuetz: "The Constitution of the German Reich", 10th edition, p.58,etc.)

The statutes of the League of Nations took up this point of view, but went one decisive step further by determining a procedure for establishing by League organs the permissibility or nonpermissibility of war. The decision purported whether the war was permitted or not by the statute. The aim of this settled procedure was to hit the disturber of international order, who was not necessarily identical with the aggressor. The state which went to war in accordance with the resolutions of the League of Nations organs behaved in a lawful way, even when undertaking preliminary hostilities, amounting to an aggression in the military sense.

It was therefore apparent that the discrimination between aggressor and attacked was not sufficient to secure an equitable settlement of international relations.

Although these statutory definitions and the proceedings based thereon pointed out that the antinomies (lawful—unlawful, permitted—prohibited, aggressor—attacked) did not apply, it was still being tried to brand the transgressor of international order through the concept of the aggressor. As the material decision failed owing to the difficulties just mentioned, it was tried to make out of the indeterminable juridical concept a political decision of the League of Nation organs qualified for maintaining international order. Such was the case in the draft of a mutual assistance agreement elaborated in the year 1923 by order of the League of Nations assembly. The Geneva protocol, which was meant to supplement the statute inadequacies concerning the question of conflict settlement, also transferred to the League of Nations council the decision of determining who had violated the agreement and was, therefore, the aggressor.

All other attempts for outlawing war and settling conflicts mentioned by the British chief prosecutor have remained drafts, excepting the Kellogg Pact.

It can probably put down to this fact that the idea of a juridical definition of the aggressor was once more taken up at the disarmament conference. In this way the definition was established in the year 1933 by the committee for security questions, guided by the Greek Politis, of the general disarmament conference committee. Owing to the failure of this conference, the definition was made the object, in the same year, of a series of separate treaties at the London conference. The only great power participating was the Soviet Union, which had taken the initiative of the defintion at the disarmament conference. This definition has also been adopted by the United States chief prosecutor, who has based thereon the indictment for a crime against peace before this tribunal. This definition is no more than a proposal of the prosecution within the limits of the statute, which does not circumscribe the concept of a war of aggression. It must be emphasized that Mr. Justice Jackson cannot invoke in this matter any universally acknowledged principle of international law.

The report of the 1933 commission did not become the object of a general treaty, as projected, but was merely agreed upon between a number of individual parties in agreements binding only for the concerned. As a matter of fact the only agreements were those between the Soviet Union and a number of states around it. No other great power accepted the definition. In particular, Great Britain kept aloof, notwithstanding the fact that the separate agreements mentioned were actually signed in London. At least the participation of the great powers would have been required for the constitution of an international law principle of such far-reaching importance for the reorganization of international relations.

Besides this juridical way of treatment the utterances of British and American chief prosecutors show that also as far as facts are concerned the proposition does not give much satisfaction. In the important question of point 4 of the definition, the British differs from the American accusation. The old conflict of interests between mare liberum and mare clausum has led the prosecution to Sir Hartley Shawcross not mentioning the naval blockade of the coasts and parts of a state as aggressive action.

The definition of 1933 may offer valuable characteristics for establishing the aggressor, but one does not get around the fact that a formal juridical definition shows the impossibility of doing justice to all actual political cases.

At the experiment to set down new regulations for creating order in the world in the Charter of the United Nations one returned, evidently having recognized this truth, to the idea of a decision by an international institution, without wanting to squeeze its judgment in to the bed of Procrustes of a rigid definition. The Charter of Peace of San Francisco says, in chapter VII, Article 39: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

In 1939 there was neither a recognized definition of the aggressor nor an institution authorized to designate the aggressor.

The League of Nations as institution for the settlement of conflicts had completely failed. This was expressed outwardly already by the part that three great powers had left it. How little the League of Nations Torso was taken notice of in international life was shown by the attitude of the Soviet Union in the Finnish question. It did not take into consideration in any way the decision of the League of Nations but followed in its dealings with Finland its own interests.

If now after these statements I make a proposal to the court of what should be understood by the word "attack" in article 6a of the Charter, this qualification cannot link up with a definition recognized in international law. We, therefore, must start off from the suppositions which the practices of states and the traditions of diplomacy are wont to connect with it.

According to the conception existing in 1939, the outbreak of war, in whatever way it happened, was not valuated juridically. The Kellogg Pact and the negotiations following it have not been able to abolish this fact which was the result of a development of centuries. This is to be deeply regretted but one cannot go past reality. That this opinion is in accordance with the conception of international law of the main participating powers that had signed the statute when war broke out follows from the fact that men of international reputation in the field of international law were of the opinion that, should the Kellogg Pact and the system of collective security fail, the traditional legal conception as to war was still valid. (Oppenheim-Lauterpacht, International Law, 5th Edition page 154.)

Was Herr von Ribbentrop obliged to have the opinion in 1939 that his acts, measured by the tradition of diplomatic technique, would be valuated as crimes punishable by international law?

I have already pointed out that generally and therefore also by Herr von Ribbentrop the then existing frontier line in the East was considered not to be tenable in the long run and was, therefore, considered to be needing some adjustment.

The Peace Conference (1919) created problems, by satisfying the Polish demands when this state was newly created, which could not be solved by international cooperation in the time during the two world wars.

These frontiers could never be guaranteed inside a system of European pacts. In the Locarno treaties a guarantee for the

Eastern frontier created by Versailles could not be reached because of the opposing interests of the participating powers, whereas for the Western frontiers it was arrived at. All that was achieved after endless efforts were arbitration treaties, connected to the Locarno system, between Germany and Poland and Germany and Czecho-Slovakia. They did not contain any guarantees for frontiers but only methods for settling litigations. I shall deal with them when I come to the various violations of treaties which Herr v. Ribbentrop is blamed for.

After Hitler had also expressed his distrust towards collective security by leaving the Disarmament Conference and the League of Nations, he went over to the system of bilateral treaties. At the preparatory negotiations to the agreements between Poland and Germany of 1934 it was clearly stated, that between the two states a solution of the problems should be found in the spirit of the treaty. We will not suppress here that for this settlement but peaceful means were considered and a 10-year non-aggression pact was concluded. Whether Hitler believed honestly in the possibility of solving this problem or hoped to change the untenable situation in the East by means of evolution is of no importance for the forming of an opinion on Herr v. Ribbentrop's behavior. He did not take any initiative in this step, but found this agreement as an existing political and juridical fact.

The experience of settling international interests teaches that agreements are durable only when corresponding to political realities. If that is not the case, the force of facts oversteps of itself the original intention of the contracting parties. A great statesman of the 19th century has expressed this truth by saying, "The element of political interest is an indispensable lining of written treaties." Thus, the Eastern question was not removed by the agreement of 1934, but continued to burden international relations. As shown by the evidence, it became more and more clear in the course of political evolution that sooner or later solutions of some kind had to be attempted. Both the statute of the Free City of Danzig, which was in contradiction with ethnological, cultural, and economical facts, and the isolation of Eastern Prussia through the creation of a corridor had brought about causes for conflict, which a number of statesmen feared as far back as when at Versailles.

Taking into consideration such a state of things, the English guarantee declaration to Poland of March 21, 1939, enlarged on August 25, 1939, into the mutual aid agreement, was susceptible, in case of the appearance of a possibility of conflict with this country, of making the Poles averse, from the first, to a sensible revision even within a moderate frame. This guarantee declaration shows once more how much Great Britain drew conclusions, taking a sensible political view, out of the decline of the collective security system, and how small a confidence it had in the practical results of the moral condemnation of war through the Kellogg Pact.

Mr. v. Ribbentrop had, therefore, to draw the conclusion out of the behavior of Great Britain, that the attitude of the Polish Government from which Germany was entitled to expect some concession was bound to become rigidly inflexible. The development during the following months proved this provision to be right. The stepping-in of the Soviet Union into the conflict demonstrates in particular that the coming danger would take place within the compass of the usual principles of politics and the carrying through of the interests of one's own country. The Soviet Union too had, on her side, left the ground of the collective security system. She looked at the approaching conflict from the viewpoint of Russian interests exclusively. As things were, Mr. v. Ribbentrop took pains to, at least, localize the threatening conflict, if it could not be avoided. He could rightly hope to succeed in this endeavor, as both powers primarily interested in Eastern Europe, the Soviet Union and Germany, concluded the non-aggression and friendship agreement previous to the outbreak of armed hostilities. At the same time, they came to terms by way of a secret agreement concerning the future fate of the territory of Poland and the Baltic countries. Nevertheless, the machinery of the assistance agreements was released and thereby the local Eastern European conflict became a world conflagration.

If one wants to apply a juridical standard to these facts, one cannot do so without taking into consideration the Soviet Union from the point of view of participation.

The extension of the war and its causes

The conflict in Eastern Europe grew, through the participation of Great Britain and France, into a European one, necessarily followed by the universal conflict. The entry in the war of the powers mentioned took place according to the forms provided by the 3rd Hague Convention concerning opening of hostilities, i.e., an ultimatum with conditional declaration of war.

At the session of March 19, 1946, Mr. Justice Jackson interpreting the indictment has stressed the point that the extension of the war brought about by the Western powers did not constitute a punishable aggression on the side of Germany. This interpretation is in keeping with his general argumentation concerning the notion of aggression. Should he want to carry this through quite consistently, he would logically have to declare Great Britain and France aggressors of Germany for having brought about the state of war by means of the ultimatum.

I believe I am sharing the prosecution's viewpoint when I give voice to the supposition that such a result would not meet the prosecution's approval. The prosecution has brought forward its evidence in such a way as to enter into the politically historical background of the war. It has accordingly not been satisfied with relying on the formal juridical definition or any single criteria thereof.

It accordingly confirms my conclusion presented by me to the Court that the definition proposed by the prosecution is no suitable base for the qualification of the indeterminable concept of aggression.

May I be allowed to summarize the events at the outbreak of the war: Kellogg Pact and aggression concept, the prosecution's pillars, do not support it. The Kellogg Pact had no juridically expressible contents, neither for the countries nor, and even much less, for an individual. The attempt to put life into it afterwards by means of a formal concept of aggression was frustrated by political reality.

Denmark and Norway

Mr. v. Ribbentrop's share in the extension of the conflict to Scandinavia was so small that it hardly can be put to his charge as a separate action. The interrogations of the witnesses, Great Admiral Raeder and Field Marshal Keitel, have shown beyond doubt that, as a matter of fact, Mr. v. Ribbentrop was informed of this operation for the first time only 36 hours in advance. His contribution was solely the elaboration of notes prescribed to him in contents and form.

Concerning the actual side, viz., the imminent violation of Scandinavian neutrality by the Western powers, he had to be content with the information communicated to him. The evidence has shown, and I shall expose later on in juridical arguments, that he was, as Minister for Foreign Affairs, not competent to check those informations, and that he did not possess any actual means to do so. Presuming that these informations were true, he could justly assume that the German Reich behaved, in the intended action, according to international law. I leave more detailed argumentation concerning this point of law to my colleague, Dr. Siemers, well conversant with this point, whose client, Great Admiral Raeder, had submitted to Hitler a large part of enemy information and the proposal for a German occupation of Scandinavia.

Belgium, the Netherlands and Luxemburg

In the case of Belgium and the Netherlands it has been proved by evidence that an unrestrained maintenance of the neutrality of the Belgian-Dutch territory by these countries could not be guaranteed. Previous to the war, there already existed between the general staffs of the Western powers and those of both neutral countries agreements and current exchanges of experiences concerning behavior and occupation in case of a conflict with Germany. Detailed deployment plans and fortification systems built under supervision of detached officers of the Western powers were meant to prepare the reception of allied forces. These projects comprehended not only a cooperation of the armies concerned, but also the assistance of certain civilian authorities, for the purpose of carrying out supplying and advance of the Allies. Important about these preparations is the fact that they were made not only for the case of defense, but also for the offensive. For this reason Belgium and the Netherlands also could not or would not prevent it that British bomber formations continued to fly over them, whose near aim was the destruction of the Ruhr district, the heel of Achilles of the German war industry. This area was also the main goal of the Allies in case of an offensive on land.

These intentions as well as the most intensive preparations for offensive measures by the Western Powers had been ascertained beyond a doubt by sources of information. The grouping of the offensive forces showed that the Belgian-Netherland territory was included in the theater of operations. As has already been described in connection with preceding cases of conflict, such information was currently passed on to Herr v. Ribbentrop by Hitler or his deputies. Here too Herr v. Ribbentrop had to rely upon the accuracy of these informations without having the right and the duty of checking on them. In that way he, too, became convinced that in order to avert a deathly danger—namely an allied thrust into the Ruhr district—preventive countermeasures were necessary. On the basis of these considerations Luxemburg simply could not be spared because of the extensiveness of modern military operations.

In connection with this procedure the prosecution accuses, among others, the German Foreign Policy and thereby Herr von Ribbentrop to have made plans to march in, in contradiction to the 5th Hague Convention concerning the rights and duties of neutral powers and persons in case of war on land. (Convention concernant les droits et les devoirs des puissances et des personnes neutres en cas de guerre sur terre.)

In this connection it was overlooked by the prosecution that this convention does not have reference to drawing a neutral into a war between other powers, but deals only with the rights and duties of neutrals and belligerents as long as the neutrality status exists. The prosecution has made the mistake to apply its erroneous interpretation of the Kellogg Pact, as I have shown, to the pact which had been made 20 years earlier. There remains no doubt that, at the time of the 2d Hague peace conference, the law did not evaluate the outbreak of war as a legal but only as an historical fact. All conventions concerning laws of war, especially the Rules of Land Warfare and the Neutrality pact for Land and Sea Warfare, are built upon the basis of an existing state of war, hence do not regulate the jus ad bellum, but the jus in bello.

This fact disposes of the prosecution's references to the 5th Convention of the Hague in all cases of the spreading of the war to the neutrals which have ratified this convention.

It is, moreover, quite doubtful whether the Locarno Treaty can be mentioned, as it was done by the prosecution in connection with drawing Belgium into the war. With Germany's renunciation in 1935 the Locarno system had collapsed, as will be shown by the defense counsel of Freiherr v. Neurath. All attempts to effect a new union which was to take its place were guided by the fact that the actual situation created by Germany must be taken as the starting point for a new agreement. This may be seen especially from the British and French plans for the intended new agreement. The attempt to create a new agreement was not successful. However, the thorough and long drawn out negotiations show very distinctly that none of the signatories considered the treaties of Locarno valid any longer. On the contrary the Western Powers proceeded to consider among themselves the effects which their obligations of guaranteeing the Western borders still held after Germany's withdrawal.

Regardless of how one may judge Germany's attitude of 1935, it remains to be stated that with it the pact system had lost its validity. Hence in 1940 German commitments to the Western Pact of 1925 did no longer exist.

I shall, on a later occasion, discuss the arbitration conventions with Belgium, Poland, and Czechoslovakia in connection with the Locarno Treaty when discussing in general Germany's obligation for a peaceful settlement of disputes. As far as Luxemburg is concerned, not even the prosecution referred to the neutralization of this country. Evidently it went on the assumption that Germany had been forced by the Treaty of Versailles to give up its rights given to her by the London agreement of 1867.

Jugoslavia

When, on 24 March 1941, the Jugoslav Government joined the Tripartite Pact, Herr v. Ribbentrop could not in the light of the available news assume that, a few days after the joining, a military intervention by Germany on the Balkans would be necessary for political reasons. This situation was caused by the forcible change of government in Belgrade. The reaction to the joining of the Tripartite Pact by the government Stojadinowitsch resulted in a new political change in Jugoslavia under the leadership of Simovitch which aimed at a close cooperation with the Western Powers counter to the idea of the Tripartite Pact.

In view of this uncertain situation in the interior of Jugoslavia which, because of the mobilization of the Jugoslav army and their deployment on the German frontier, became a danger for the Reich, Hitler suddenly decided on military operations on the Balkans. He made this decision without the knowledge of Herr v. Ribbentrop, with the idea in mind to eliminate an imminent grave danger for the Italian ally.

The testimony of the witness Colonel-General Jodl has shown beyond a doubt that Herr v. Ribbentrop, after Hitler's decision and after the Simovitch Putsch, seriously endeavored to be allowed to exhaust all diplomatic possibilities prior to the beginning of military operations. Colonel-General Jodl has confirmed there that H.v.Ribbentrop's endeavors were rejected in so rude a manner that, taking into consideration Hitler's nature and the prevailing methods, any influence on Hitler was practically out of question.

The fact that since March 4, 1941, strong British forces were pushing to the North from southern Greece made a further localization on the Italian-Greek conflict impossible. This war had begun in the autumn of 1940 against German wishes, but Hitler could, with a view to the general situation, certainly not tolerate the imminent defeat of his Italian ally.

When H.v.Ribbentrop on August 23, 1939, signed at Moscow the treaties between Germany and the Soviet Union, including a secret agreement concerning the Division of Poland and the surrender to Russia of the Baltic states, the ideological discussions, in part, of an extraordinarily vehement nature between National Socialism and Bolshevism were, for the time being, eliminated from the international sphere, where they formed elements of possible danger. This system of treaties, to be supplemented in the course of the next month, had a favorable influence on the opinion concerning Hitler's foreign policy of large circles of the German people, which were alarmed by the ideological contrasts.

Since the Reinsurance Treaty signed by Bismarck with Russia there was a general conviction in Germany that the maintenance of friendly relations with Russia must always be the goal of our foreign policy. For the just mentioned traditional reasons Herr v. Ribbentrop considered these pacts a strong pillar of the German Foreign policy. Because of this opinion he invited in the winter 1940 the Foreign Commissar of the Soviet Union, Molotov, to Berlin, to clear up problems which had arisen in the meantime. Unfortunately the conference did not bring the desired results.

Hitler became very much alarmed by this conference and by secret information, as about the future attitude of the Soviet Union towards Germany. Especially the attitude of Russia in the Baltic countries as well as the Soviet march into Bessarabia and into the Bukowina were considered by Hitler as actions which were apt to endanger the German interests in the Baltic provinces and in the Rumanian Oil district. He furthermore saw in the attitude of the USSR the possibility of taking influence on Bulgaria. He could consider the Friendship Pact with Jugoslavia on 5 April 1941 as a confirmation of his suspicion, as it occurred at a time when Jugoslavia, after a change of government, threatened to turn to the Western Powers.

In spite of these misgivings of Hitler of which he frequently informed Herr v.Ribbentrop, the defendant tried to avoid the tensions. The Tribunal has permitted me to submit an affidavit which confirms that Herr v. Ribbentrop still tried in December 1940 in an extensive discussion to induce Hitler to give him once more authority for the inclusion of Russia in the "Dreierpakt" (Tripartite Pact). This documentary evidence confirms that Herr v. Ribbentrop after his conference could have been of the opinion that he would succeed in this step through the consent of Hitler. Subsequently Hitler, however, returned again and again to his misgivings which were strengthened by the news of his own secret service about military operations on the other side of the Eastern border. In the spring of 1941 Herr von Ribbentrop tried to bring to Hitler in Berchtesgaden the then Ambassador in Moscow and one of his subordinates. Both diplomats were not admitted. This ended Herr v. Ribbentrop's possibilities in his position under the regime. He afterwards also believed that he could no longer shut his eyes to the information which was brought to his knowledge.

As Colonel General Jodl had testified, he and all the Commanders in Chief who took part in the beginning of the Russian campaign were convinced that they had pushed right into the midst of an offensive concentration of troops. This is proved by, among other things, maps which were found and which covered the territory on this side of the German-Russian line of interests. Can one really believe that this conduct of the Soviet Union is in agreement with the Non-Aggression Pact?

U.S.A.

Around that time the danger of a spreading of the European war into a world war began to stand out more and more threatening. The United States proclaimed a neutrality law at the beginning of the war in which they submitted in advance to fixed rules in case of a future war. The mechanism of the neutrality law was set in motion by a proclamation of the President. It designated at the same time the danger zone within which American ships could not count upon the protection of their government.

This attitude at the beginning of the war confirms that the United States, the author of the Kellogg Pact, were not of the opinion that the traditional law of neutrality had in any way been modified by it. The USA, however, deviated during the course of the spreading and the aggravation of the European war more and more from the original line without the German Reich furnishing any cause for conflict with USA. According to the experiences of the first world war German general opinion and consequently that of Herr v. Ribbentrop was for a prevention by all means of an intervention of the USA.

Since the quarantine speech of President Roosevelt in 1937 strong contrasts could be noticed more and more in the ideological-political train of thoughts of the world's public opinion. The situation was aggravated by the incidents of November 1938 in Germany which were the reason for the recall of the Berlin Ambassador to Washington for reporting, from where he did not return to his post.

If, in spite of that, the neutrality policy was further prepared by legislative actions and became effective at the beginning of the war, the German Foreign Office and Herr v.Ribbentrop could conclude that the existing difference of opinion as to the internal political form of the state would not change the neutral attitude of the United States. Because of this expectation not only everything that could produce unfavorable effect in the USA was avoided since the outbreak of the war but we also acquiesced to quite a number of actions by the US which were weakening Germany and were not in accordance with strict neutrality.

The world public was informed of the accordance of the political aims of the neutral America and the belligerent Great Britain when the leading men of the two states proclaimed in August 1941 the Atlantic Charter as the program of the new order of the relationships between the nations. It had an obviously hostile character against the axis powers and left them no doubt that the US had sided with the other side.

There followed the incidents on the high seas which, as the evidence has shown, can be credited to the account of the material support of Great Britain by the United States.

In occupying Iceland and Greenland in summer and fall 1941 the USA took over the protection of the most important line of communication of the then severely struggling British Empire. This was a military intervention already before the outbreak of the officially declared war. The so-called shooting order of the President brought about a dangerous situation which could result any day in the outbreak of the armed conflict. Already several months before the 11 December 1941 the USA took measures which used to be taken only during a war. The outbreak of the war was only a link in a chain of successive incidents, perhaps not even the most important. It was caused by the Japanese attack on Pearl Harbor, which, as the evidence has shown, was neither instigated nor could have been foreseen by Germany.

According to the formal definition of the aggression the declaration of war is one of the criteria for the determination of the aggressor. As I already pointed out in connection with the spreading of the war in Europe this criterion alone without the factual background is no positive proof for an aggression. As reaction to the numerous neutrality violations by the United States, which represented already actions of war, the German Reich would have been justified for a long time to reply on her part with military actions. Whether this right was exercised after a preceding announcement, that is a declaration of war or not, is immaterial.

The Legal and Actual Aspects of Violations of International Treaties

So far I have thrown some light upon aggressive acts as enunciated by the prosecution from the beginning of the Polish Campaign to the entry into the war of the United States. It remains to take up a juridical position regarding the treaties, concluded by Germany, and which provided for a pacific settlement of political conflicts.

H. v. Ribbentrop is charged not only with having been a party to aggressive acts, but also with his omission to release the mechanism of aforesaid treaties previous to armed conflict. From the fact that the ways for pacific settlement, as provided by the treaties, have not been used, the prosecution draws the conclusion that these omissions can be attributed, in a criminal sense, to H. v. Ribbentrop. This interpretation, however, would be erroneous in a legal sense.

If we begin by sharing the prosecution's point of view, we shall see that even in this case the conclusions drawn by the prosecution cannot be upheld. Even if a single minister could be made legally responsible for the nonoperating of a set of treaties, the prosecution cannot but ask whether the minister was actually in a position to insure a result of any legal consequence. According to a principle embodied by nature into any system of criminal law on earth, a defendant is punishable for an omission only if he had actually been in a position and legally liable to act. I shall demonstrate at length, within the compass of my arguments concerning the conspiracy, how small, in fact, H. v. Ribbentrop's possibilities of influence have been. The decisive point at issue is the fact that he was not legally in a position to make any declarations to foreign powers binding the German Reich, other than those he was empowered to do by the head of the state. As head of the state, Hitler was the representative of the German Reich from the point of view of international law. He only was in a position to make binding declaration to foreign powers. Any other persons could legally bind the German state only if authorized by the head of the state, unless the treaty in question explicitly provided otherwise.

It is not a characteristic of the German Fuehrer state only that the foreign minister cannot independently enter into binding commitments towards foreign powers. It is rather a general principle of international relations that only the organ empowered to represent the state is apt to act for it. The difference between German conditions and those of democratic constitutions merely lies in the fact that in the former the foreign minister usually has got a larger internal influence on the intentions of the head of the state. The defendant, therefore, could not have obtained any legal result if he had tried, against the Fuehrer's wish, to have recourse to the possibilities of settlement of conflicts as provided by the numerous treaties of arbitration and conciliation. No one but Hitler could have put in motion such a procedure. The defendant could have been in a position to do so by Hitler's order only. He had not even a claim on giving advice if Hitler chose to ignore him.

These points of view apply, e.g., to the following treaties enumerated by the prosecution: Convention for Pacific Settlement of International Disputes of 1899 and 1907; Treaty of Arbitration of 1929 between Germany and Luxemburg. It should be mentioned, moreover, that these agreements did by no means provide an obligatory settlement of political disputes.

As to treaties of arbitration and conciliation with Poland, Czecho-Slovakia, and Belgium, concluded in connection with the Locarno treaty, the additional point applies—quite besides the legal argument just mentioned—that they and the Western pact form a political unit. Even externally, this is expressed in the fact that these agreements and the Locarno pact are all of them annexes to the general final protocol of the powers participating in the Locarno conference. The question could, therefore, be asked whether the arbitration treaties share the fate of the principal treaty, i.e., the Western pact.

I should particularly like to point out that the procedure laid down in these treaties had finally led, in case of non-settlement before the League of Nations Council, wherein, at the time of the Western Pact, the four participating great powers had, or—as was the case for Germany—was to have permanent seats. The withdrawal of Italy and Germany from this political body deeply affected the principle of the political base which supported the settlement treaties. Moreover, the grouping of the powers had shifted so much that a part of the Locarno great powers, viz., Great Britain and France, had in the year 1939 gone into binding agreements with Poland, so as to take sides beforehand in the event of a possible conflict.

Concerning the treaties of arbitration and conciliation with Denmark and the Netherlands of 1926, I may be allowed to point out that the proceedings provided therein could not be applied at all, as there were no conflicts between Germany and aforesaid countries, quite to the contrary. Germany took steps which were aimed at the enemy belligerents, which were meant to be preceded in the occupation of these countries.

The prosecution mentions, moreover, a number of assurances given by Hitler to countries with which Germany waged war afterwards. As H. v. Ribbentrop did not give such assurances in person, his participation could form a point of argument only if he had given advice to Hitler in this respect. No evidence has been produced to sustain such a suggestion. A large part of these assurances is contained in speeches made by Hitler before a German public, either in mass meetings or at the Reichstag. It is doubtful indeed whether such declarations, addressed in the first place to the German public, could have any binding results in the field of international law.

Actual and Legal Aspects of War Crimes and Crimes against Humanity attributed to H. von Ribbentrop

Whereas up to now I have spoken about the actions that led to the outbreak of the war and its spreading, I shall now proceed to the second large complex of the indictment, which deals with crimes committed during the war.

The Charter, in Article 6b, declares violations of the laws or customs of war to be punishable. This conception is illustrated by enumeration of a number of examples such as deportation, shooting of hostages, etc. But these examples do not limit the conception. We are therefore obliged in the same way as with Article 6a, to propose to the court a qualification, which it can use as a base for its decisions.

I agree in this conception with the procedure proposed by the French prosecution. They declared that they would be free to give a more explicit definition of punishable offenses which had not been fully defined by the Charter.

What is good for the Prosecution is good for the Defense.

The use of the expression "Laws and Usages of War" (lois et coutumes de la guerre) as well as the enumeration of examples forces one to believe that the Charter aims at violations of the classical "jus in bello". I therefore qualify war crimes as offenses against the law established between belligerents by agreement or against prescriptive law, binding and recognized generally without special agreement. The several cases, which come under the collective conception of war crimes, must therefore be each examined as to whether they are to be regarded as such according to the traditional rules applying to armed conflicts between states. Whereas, in general, classical international law holds responsible the state as a unit only, there always existed in the usage of war, the exception, that also acting individuals were liable to be held responsible. Whether this responsibility of the individual person can be followed up in a punishing prosecution after the war has been the subject of many discussions. One will be able to ascertain that in the ruling practice of states, the belligerent who was violated by a war crime may also after the war call to account the offender. If several states, which have fought shoulder to shoulder in the war, form a common court against the war criminals of the conquered adversary, this court has the collective competency of all the states that form the court or have joined its Charter.

When speaking of the liability of individuals to be punished for crimes committed during the war against the adversary, who thereafter sits in judgment upon him, one would be thinking in the first place of former members of the combating forces. Already at Versailles there were difficulties in answering the question to which degree military chiefs were to be made responsible. The idea to have a Minister of a cabinet (Ressortminister) held responsible under criminal law, so far never has appeared. Also in Versailles the war criminals committee was occupied with the question of making responsible nonmilitary personalities from only political points of view. This committee discriminated clearly between war criminals, which were to be judged by the allied court, and the guilt with regard to the outbreak of the war, for the examination and judging of which a special political international court was to be created.

By means of the traditional conception a Minister (Ressortminister) cannot therefore be held responsible for violations of the "jus in bello". The prosecution can reach this success only by going the round about way via a conspiracy. If we follow the interpretation given to this conception, the Foreign Minister of the Reich would, e.g., have to be responsible for the destruction of the village of Ouradur. He would have to stand up for actions which have not in the least to do with the Reich's foreign policy and are only single actions of some odd offices.

As the hearing of evidence has shown, the Reich Foreign Minister was not only not competent for the conduct of war, but had in fact not the slightest possibility of influencing military measures either in a curbing or furthering way. If one should want to regard the various Ministers (Fachminister) as a community of conspirators also with regard to war crimes, it would have to be proved that the military, competent to conduct the war, acted in agreement with the ministers or at least after having given them the necessary information. The compilation of military command offices and ministers to a union of will directed towards the execution of actions criminal and abominated by all decent people, is an artificial subsequent construction of the prosecution. The unity, which did not exist at the time at which it is supposed to have worked, has but now been drawn up as a conception. It is self-evident that a criminal procedure cannot be built up on such a method.

Herr von Ribbentrop can therefore not be punished without consideration for all war crimes committed during the war on the German side. Such a responsibility for the results would be outright grotesque. He could on the contrary only be responsible for individual actions, if he himself participated in certain concrete individual actions.

H. v. Ribbentrop is accused by the prosecution that, according to testimony by General Lahousen, he issued "directives" to Admiral Canaris to have Ukrainian villages set afire, and to beat the Jews living there to death. First I wish to establish the fact that even a Foreign Minister cannot issue directives of any sort to a military agency. Furthermore, it would have been wholly nonsensical to issue such directives for setting afire Ukrainian villages. Ukrainians supported the German fight against the Poles. Thus, hardly anyone will believe that H. v. Ribbentrop at that time advised on the destruction of an own ally. My client further insists that not one word was mentioned about the beating to death of Jews in that particular conference, especially so, as in connection herewith no reason for it existed.

I beg the Tribunal to base their decision on charges of war crimes and crimes against humanity raised on H.v.Ribbentrop, on the general attitude of the accused with respect to questions of humanity, as was proved beyond doubt by the evidence H. v. Ribbentrop saved the lives of 10,000 allied prisoners of war through vigorous, personal intervention. As I will further show —within the framework of the conspiracy—he was instrumental in the unshackling of British prisoners of war and he used his influence for the preservation of the rules of the Geneva Convention. He was opposed to branding Russian prisoners of war. These are examples whereupon the Tribunal may base their decision with respect to questions of humanity. In problems where he was not actively involved, this may appropriately gauge the remaining attitude of the accused, as concerns questions of humanity. Further his attitude in the question of treatment of terror aviators is charged as a war crime to H. v. Ribbentrop.

My client as well as the defendant Goering deny that the conference at Schloss Klessheim, mentioned in document 735–PS, ever took place. I should like to emphasize that General Warlimont, who made those notes did not personally participate in the conference. Furthermore, the expression of opinion, attributed according to the document to H. v. Ribbentrop stands in contradiction to his usual demeanor in this question. Under Secretary Steengracht deposed that H. v. Ribbentrop, after the publication of the notorious article about lynch justice in the Reich, at once vigorously protested against it.

Further evidence concerning the problem of terror aviators through examination of the witnesses General Jodl and Fieldmarshal Keitel proves that, not only the Foreign Office but H.v. Ribbentrop personally had pledged themselves in principle for the preservation of the Geneva Convention and that H.v. Ribbentrop and other leading personalities took pains to assure the retention of at least the basic human principles even in Hitler's most radical period. In spite of all that happened, it must be pronounced as a success, that in consequence of these steps the Geneva Convention was not abrogated. Hereby it must never be overlooked that especially in cases of terror fliers, where so-called terror attacks in the form of air bombardments were involved, which were characterized by an indiscriminate attack upon cities without attacking military and armament objectives, such attacks then undeniably constituted a war crime in themselves. It must be taken into account in the reaction throughout Germany towards the conduct of air warfare of the western powers, that according to established and traditional conceptions of an armed conflict between nations, the attack on the civilian population is prohibited. This thought is not only expressed in the Hague Convention on land warfare but constitutes a stipulation by contract of general international law, binding for all, which is valid not only in the theater of operations on land. Acknowledging this, the Hague rules of air warfare, although permitting air attacks of military objectives in undefended cities, do not permit the bombing of dwellings of the civilian population. Although the Hague rules were not ratified, they were in practice followed by all belligerents, and acknowledged as common law. These measures became especially acute after complete air superiority had been achieved by the Allies and the resulting constant low level attacks with weapons on board on the civilian population took place. These particular events led for the first time to the discussion, whether in the face of a warfare which was undeniably violating international law, it was still of any use to uphold the Geneva Convention in its substance. These considerations and corresponding reflections led to the drafting of documents which have become the object of evidence in the proceedings and which constituted—as was shown by the evidence—drafts, but not decisions in this question. They can therefore not form the basis of a judgment, as certainly a state is entitled to having appropriate agencies express their opinion on this question.

Opinions on the Conception of Conspiracy in Relation to the Position of Herr v. Ribbentrop as a Minister

With the permission of the Tribunal I presented the role of Herr v. Ribbentrop before the war, at its outbreak, and for its duration. Beyond this the prosecution holds all defendants responsible for every crime presented here. The notion "conspiracy" is being used for motivating this common liability. If the consequences were drawn from this extravagant accusation then each defense counsel would have to deal with all details presented by the prosecution. The obvious impossibility to use up so much time of the Tribunal shows how questionable the basis of the accusation is. Therefore I have to confine myself to examining the participation in the conspiracy from the viewpoint of the actual and legal position of the Foreign Minister in the Third Reich.

Conspiracy in the sense of the Charter and of the Indictment means a sort or form of participation in a punishable act. This kind of offense was until now unknown to German and continental legal thinking. It existed only in the Anglo-Saxon law. In this legal sphere conspiracy means participation in a punishable act which requires, as a minimum symptom, an agreement (Einigung) to commit a crime. A further prerequisite is that the mutual plan causes the perpetration of a definite punishable offense.

The Charter proceeds from this form of participation in a crime in declaring punishable all offenses stated in par. 6, assuming the existence of a conspiracy or a common plan, as a special form of participation in those crimes. The Charter then stipulates in par. 6a another special form of conspiracy declaring punishable the participation in a common plan or conspiracy to carry out offensive wars or wars violating international treaties.

Under the conception "mutual plan" the Charter and Indictment obviously understand something that reaches beyond the sphere of conspiracy. Mr. Justice Jackson himself admitted that the application of the conspiracy as an offense according to Anglo Saxon law was exceeded and a conception created which is not yet juridically determinable. Both forms of conspiracy constitute a liability for all acts committed by any one person carrying out both these forms of conspiracy.

The indictment uses piracy as a pattern in order to make the participants in this alleged conspiracy appear as a whole. The conspirators are all on board of a pirate ship which, contrary to law and justice of all nations, engages in robbery and therefore is outlawed. Anyone who punishes the crew helps to restore justice. At the first glance this picture appears to be attractive.

However, on closer inspection, it becomes obvious that it is only a matter of a catchword which tries to apply the community of the ship's crew, united with the ship for better or worse, to the place of the—by no comparison—more complicated conditions of a modern state organization. The ships of all nations are according to established, commonly recognized, and uncontested conceptions authorized to combat piracy on the high seas upon encountering a pirate. The criminal jurisdiction of almost all nations knows explicit regulations for combating them. The peculiarity of this offense in distinction from other acts punishable in every country whether committed against own or foreign nationals—for example white slavery traffic, acts of forging coin and so forth—is the circumstance that the jurisdiction is carried out on the high seas. Thereby the mistaken idea may arise that a crime in the sphere of international law is concerned. This, however, is not the case. Piracy is a common offense, the prosecution of which is by international law permitted not only in coastal waters but also on the high seas belonging to all nations. The basis for this conception was laid in the United States already in the beginning of the last century by decisions rendered by Chief Justice Marshall.

The acts with which Herr von Ribbentrop is charged were committed at a time during which the German Reich and its opponents confronted one another first in peace and then in war, on the stage of international relations. An example taken from the sphere of international common penal law is not suited to convey a plastic conception of a conspiracy of an entire state apparatus. Besides the arrow hits the archer himself. In the first place, the idea of the state, which according to the conception of the traditional international law is the only carrier of rights and duties, is being destroyed so that the persons standing behind it and acting on its behalf may separately be made liable to criminal prosecution. As usually only few persons acted directly as participants in the acts charged, the multitude of these people is then again compressed into an artificial whole, in order to hold them responsible also for those acts which were not committed by them.

Here the criticism of the jurist has to set in. According to our perception of law and also to the perception of law of all civilized nations, the criminal responsibility is tied only to a few basic rules showing but few divergences. According to continental law only such person can be held responsible for a punishable act who deliberately or negligently contributes to a definite act. By unanimous conception the perpetrator therefore is supposed to know the plan to which he allegedly contributed; to foresee and approve of the acts committed in executing it.

The participation in the form of conspiracy was until now known as an offense only to a limited legal circle. Therefore it is familiar only in a part of the legal systems of those nations who carry on or have joined in the present proceedings. It was completely unknown to the German idea of law and therefore to Herr von Ribbentrop at the time of his political activity. Conspiracy as a form of complicity marks a much wider range of actions as criminal than Herr von Ribbentrop could have anticipated at the time of his activities in the field of foreign policy. But even if this form of complicity is assumed as a base for legal findings according to the Charter, neither the official position as Reich Foreign Minister held by Herr von Ribbentrop nor the individual acts committed by him in this capacity made him liable of becoming a member of a conspiracy. The case von Ribbentrop shows in particular how, through the introduction of the concept of a conspiracy, responsibilities are getting interlocked, which have nothing whatever to do with each other, if we take into account the official position and authority as well as the personal attitude of the individual conspirators. The prosecution, however, compresses, in order to achieve their aim, into a unity artificially and subsequently created a number of actions and individuals, chosen at random, which do not form any natural unity and of which most of them had nothing to do with each other at all. If we followed the Charter and the Indictment, there would appear as result the fact—wholly alien to any actual and legal thought—that Herr von Ribbentrop, while personally and actually, as thoroughly proven by evidence, completely eliminated from any influence on the occupied Eastern territories, would have to bear the responsibility for war crimes and crimes against humanity committed there, whereas, for instance, the defendant Streicher although he headed his special department would be answerable for the foreign policy.

If one confirms the existence of a conspiracy to commit war crimes and crimes against humanity would practically result in making Herr von Ribbentrop and the Foreign Office responsible for such crimes, whereas evidence has shown that this very office has always tried to observe the rules of warfare, according to international law, and to adhere to the Geneva convention even if this involved a severe struggle with Hitler. The conspiracy to commit war crimes and crimes against humanity can only refer to actual offenses against rules of war, either individual actions, as the execution of escaped British Air Force officers, or certain measures incompatible with the adopted rules of war. At any rate, the unity of conspirators ought to refer to a specific action or specific groups of actions of the same nature. It is impossible to hold a defendant responsible for actions not approved by him, or which he tried to prevent.

I think that the prosecution will agree that there simply cannot exist any conspiracy to commit crimes against the usages and customs of war. This concept is so controversial and is so undetermined in practice of the states and in the theory of international law, that individual acts, which in the course of war may be considered as war crimes, could not form a part of the development of means and methods of war modifies also the contents of the concept of war crimes. Therefore, there cannot be but a conspiracy to commit specific or war crimes or war crimes of the same kind. Therefore, any one of the so-called conspirators can not be held responsible for each and every action which an objective judgment must define afterwards as a war crime. Particularly, it would not meet the purpose of the guilty if the defendant would be punished according to the general and artificial concept of conspiracy exclusively, even for such war crimes which they tried to prevent with all their efforts.

This point of view applies particularly to Herr v. Ribbentrop. Not only did the military conduct of war not belong to his sphere, but he was, as was proven by evidence, expressly excluded from it by a repeated order of Hitler. His department had only to do with war crimes insofar as they led to negotiations with foreign powers. Moreover, the fact, for instance, that after the terrible air bombardment of Dresden, the execution of 10,000 allied prisoners of war was prevented on H.v.Ribbentrop's initiative with Hitler, proves that he has done, when informed of imminent war crimes, what to do was in his power and within his influence. These arguments and the result of evidence show how unjust it would be to share the point of view held by the prosecution, e.g., to hold a Foreign Minister with reduced authority responsible for crimes against usages of war and humanity, the more so as it has been conclusively proven that he was excluded from any influence on the conduct of war.

With the court's permission, I shall now deal with the alleged conspiracy for planning and preparation of aggressive wars and of violation of treaties. Within the frame of such a conspiracy, the defendant is apparently to be held responsible in his capacity as Minister for Foreign Affairs and the office formerly held by him in the diplomatic service.

This kind of conspiracy appears to deal with any act or plan which have any connection with war, its preparation, outbreak and course. Any individual act within this enormous complex of concepts is irrelevant in itself from the point of view of criminal law, and has had, until now, never been conceived as a crime called "outbreak of war". This kind of conspiracy does not contain any facts which come under the crimes so far known by any system of criminal law in the world.

Therefore, I cannot but investigate this complex from the point of view of v. Ribbentrop's ministerial position and his relation to the German Reich which waged the various wars.

H.v.Ribbentrop, since the 4th of February 1938, held the position of a Minister of Foreign Affairs of the German Reich. As shown by evidence, H.v. Ribbentrop was called to this office at a time when the actual leadership of foreign policy had already passed to Hitler in his double capacity of Reich Chancellor and head of the state. I have submitted as a document Hitler's speech of July 19, 1940 held at the Kroll opera house, where he emphasized that H.v. Ribbentrop had had to handle for years foreign policy according to Hitler's political directives. H.v. Ribbentrop, therefore, did not possess the position of a minister, as customary in modern constitutions. As shown in above-mentioned speech, he did not possess it either in fact or in law. This is shown by an examination of the public law of the Third Reich.

According to constitutional law, as it has developed in modern states in the course of the 19th and in the beginning of the 20th Century, the department of the Minister for Foreign Affairs belongs to the executive functions. The Minister for Foreign Affairs has to share the responsibility of conducting foreign policy with the Prime Minister. This involves in a parliamentary democracy responsibility to the representatives of the people; in a nonarchical or presidential constitution to the head of the state. This responsibility is actually of political importance only, and infers the resigning of a minister from his office when he does not enjoy any longer the confidence of parliament or of the head of the state. Most constitutions make provisions for indicting a minister by the representatives of the people in case of violation of official duties. But even when convicted by a constitutional court in a kind of criminal procedure, the minister is not punished, but his actions are merely declared to have been illicit.

Both possibilities to call ministers to account were provided by the German constitution of the Weimar republic. By the way, the possibility of indicting a minister has never been made use of.

Constitutional law of the Third Reich utterly changed this state of things. A short time after Hitler had come to power, parliament was asked, with reference to existing internal difficulties, to give its consent of an "Enabling Act" (Ermaechtigungsgesetz). The German people and its representatives expected at the time that this authorization was to be used temporarily, and merely for the removal of actual distress. This law became, however, the foundation of a complete transformation of the constitution. The possibility of being responsible to a parliament did no longer exist. It changed into the responsibility towards the Fuehrer and Reich Chancellor, in whose person the authority given up by parliament now rested. Now there remained but one responsibility; that towards the head of the state. Starting from this parliamentary authorization all functions, derived from the power of the state, concentrated more and more in Hitler personally. The traditional division of power, the result of a more than century old struggle for constitutional rights, became an empty shell by joining together all means of power and thereby obsolete. The power was concentrated in the hand of the Fuehrer, who had it applied by his plenipotentiaries separately. The theory of the state law of the Third Reich designated this as change from the actual to the functional division of power.

The single Minister after this change had taken place did not act any longer under his own responsibility but only by the order (Auftrag) he had received from the head of the state. What applied to the individual, also applied to the former Reich Cabinet. It had no influence any longer on state leadership but was a common conception for various branches of administration technically separated. As the political tasks no longer existed with which normally the Ministers as a group had to deal with—and so to the cabinet—the tasks of the council of the Ministers were done automatically by the weight of the facts. Therefore, as the hearing of witnesses has shown, it never met during von Ribbentrop's period of office. Even the title "Minister" did not signify any longer the head of a department of administration (Reichsressort) but became a mere title expressing a rank.

The result of this reform was that the Minister for Foreign Affairs also did not have any longer the right to set down the directives of foreign policy. The hearing of evidence has shown this fact also in the form of speeches and utterances of Hitler, in which he, after the Rhineland occupation and the "Anschluss" of Austria, said that he brought about these, as he called them "great decisions", against the will of his advisers by his own decision and referring to his responsibility towards the German people and history. Seen from the state law point of view this means that no minister had the possibility of preventing the decisions. Also from the state law point of view he was not authorized to examine the legality of the Fuehrer's decisions. Because from the just described concentration of all functions of state power in Hitler's person followed that he was authorized to carry out legislative and executive functions. A special form of the act of legislation was no longer provided for in the Third Reich. Also there was no measure by which from the contents of the Fuehrer's decisions one could draw conclusions, whether he acted in his capacity as law-giver or as head of the executive. The conception of material law laid down in Germany as in all continental states till the assumption of power (Machtuebernahme) completely lost its meaning; also individual directives were given in the form of laws. In all constitutions the authorities whose task it is to apply laws are forbidden to examine the contents of these laws. This is even valid for jurisdiction, how much more for agencies of administration. The application of a law that was made in the correct way, provided for by the constitution, must not be refused by any office in the state. The action of examining even by the law courts is limited to the question whether the way laid down by the constitution has been followed. This is also the case in Great Britain and the United States, wherein decrees issued by the executive may be subject to examining with regard to their contents but not laws passed by parliament.

In the state law of the Third Reich there was only one authority for all expressions of will of the state: the Fuehrer. It often could not be found out on account of the dissolution of the conceptions of state law in which capacity he acted. The doctrine of state law of the Third Reich, therefore, was debased to a theology of revelations of the Fuehrer. The old discriminations ceased to exist in the thinking of the Ministers. The only question that could arise in state law of the Third Reich was whether the will of the Fuehrer was expressed in a clear enough way to contain the will of the state.

This practice of constitutional law was unmistakeably the result of having transferred the pseudo-military way of thinking to the sphere of politics. The conceptions obedience and discipline were transferred into a department in which they did not belong.

In connection with the statements on the elimination of the traditional division of power we must point to a fact, which is just as characteristic for this despotia sui generis, as it speaks against the existence of a conspiracy or a common plan.

The hearing of evidence shows no kind of council giving or controlling agency to the head of the state. Neither the cabinet nor the Reich defense council nor any other advisory committee had any influence on Hitler's decisions.

The key documents and the statements of witnesses only show monologues of Hitler before an increasing audience. All, that has the appearance of a council, is in reality reception of orders. The hearing of evidence has shown it to be certain, that efforts to influence Hitler could at the most lead to reactions not to be precalculated.

Herr von Ribbentrop and several of the other defendants, without doubt, had considerable power in their own sphere which did not interest Hitler. They were, however, completely denied to participate in the great decisions on war or peace, armistice, peace offers, etc.

In the position of Foreign Minister, as held by Herr von Ribbentrop, an independent personality could not be tolerated. Herr von Ribbentrop was aware of this as Under Secretary of State v. Steengracht has testified here. He stated: "Hitler could have use for an Under Secretary for foreign affairs but not for a Minister of foreign politics." This development of practice of constitution and government can hardly be reconciled with the thought of a common plan and conspiracy. The conspiracy demands, as we have seen, a combination and agreement in aims at which the participants form their will freely. The political practice of the Third Reich only knew the acclamation.

Remarks on the Legal Significance of Political Actions

So far, my examinations have been based on the norms of actual criminal law as laid down in par. 6. I should not like to close my statement without drawing the Court's attention to the relation between politics and law. The essential contents of politics is and remains, in the life of sovereign states, the defense of the interests of one's own people. In order not to let this interpretation of politics become debased to unscrupulousness, international life has established the concept of the settlement of interests, and diplomacy as representative of this principle. It has been diplomacy which has had an essential influence in establishing the principles of international relations and, therefore, of international law. The imperfection of international legal order is caused by the co-existence of many countries which were acting on a base of equality. Its Achillean heel was the lack of any superior authority which could have been in a position to insure the existence of legal order in the same way as the authority of a state is able to do within its own borders. For all the time unrestrained display of forces has, therefore, played a far greater part in the international sphere. Statesmen are committed to take care of their people's interests. If they fail in their politics, then the countries they were acting for have to bear the consequences, and they themselves are judged by the judgment of history. But in a legal sense they were responsible only to their proper country for acts which their country was charged with, acts looked upon as infringing international law. The foreign country injured by the action in question could not hold responsible the acting individual. The partition erected by international law, respectful of national sovereignty, between the acting individual and foreign powers, was only removed in the case of war crimes whereof I have spoken.

At any rate, such was, at the beginning of World War II, the conception of international law, and it was not affected by any opposing attempts.

The French chief prosecutor gave as a reason for the indictment of leading men of the late regime the fact that a German government, which might be able to take jurisdiction in these cases, was lacking. I have the fullest esteem for this most elegant argumentation, but it cannot remain hidden to a critical observer that such a sharp logic has led to a false conclusion. Any organized resistance headed by a national government came to an end when the German Wehrmacht was utterly defeated and the whole of the German territory occupied by the Allies.

The four principal victorious powers which form this Tribunal acquired, together with actual authority, a legal title recognized by international law concerning any decision as to the fate of the German national territory. They could have divided up Germany. But they chose another way. In the Berlin declaration of June 5, 1945, they assumed "supreme authority within Germany, including all the powers possessed by the German government, the High Command and any state, municipal or local government or authority." But this was all. The declaration expressly emphasized that the transfer of the said authority did not effect the annexation of Germany.[1]

The exercise of the claimed powers was transferred to the Control Commission, composed of the commanders-in-chief of the four occupation zones.

Since the Berlin declaration Germany is in a transitory state still lasting at present. At the Potsdam conference held in July

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[1] "The Governments of the United Kingdom, the United States of America, the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal, or local government or authority. The assumption, for the purposes stated above, of the said authority and powers does not effect the annexation of Germany."

1945 the four powers have come, among themselves, to further agreements, made public by means of the statement of August 2, 1945. The Potsdam "Agreement for the establishing of a Council of Foreign Ministers" transfers to the said council the preparation of a peace settlement, which is to be ratified by a German government "when a government suitable for this purpose has been constituted". A second agreement provides regulations concerning Germany under allied control. Those wordings make it clear that Germany is to remain a national state, that it is being placed under allied control and that the establishment of a German government is planned. This government is to accept, at a future date, peace conditions. This involves a government which is in a position to enter into commitments towards foreign powers as an internationally qualified partner.

The victors have accordingly chosen to exercise their power for decision given to them by conquest in such a manner as not to destroy the German state. During the transition period they themselves exercise the functions of the—temporarily nonexisting—German government. We are therefore entitled to take the Potsdam Declaration as a foothold for the legal interpretation of Germany's position. The German state, accordingly, has not been annihilated. Germany is burdened with obligations which arose from her past. This is possible only when the state upon whose attitude the obligation is based and the one who must answer for it are countenanced as one and the same legal body. Though the German State, at the moment, is not in position to act according to international law through its own organs, it has not vanished from the sphere of the international legal order.

The final deductions of Mr. de Menthon cannot be accepted in view of the fact that his suppositions are wrong. Therefore, the jurisdiction of the victorious powers over German Nationals with regard to acts connected with National Socialistic policy cannot be based on current international law. Thus, the Charter deviates from the international legal order. Furthermore it contradicts fundamental principles of criminal law.

If the French prosecutor is of the opinion that the Tribunal exercises the authority of the German state to punish, a state which according to the opinion of Mr. de Menthon does not exist at this time, then he must logically apply the sentence "nullum crimen sine lege" to the criminal law existing in Germany. An act could therefore be made punishable only if at the time of its commitment it was punishable according to the German law. This does not apply to personal criminal responsibility for the violation of international treaties and assurances as well as for the participation in the conspiracy and the common plan. In recognition of this the Control Council for Germany in its proclamation No. 3 has reinstituted in the system of German criminal law, two international principles, wherefrom the Hitler Regime had deviated: namely prohibiting retroaction and analogy.

The political criminal concepts of the Charter create new legal principles which have to be considered as the germ of a code of world law. Herr v. Ribbentrop, at the time these incriminating events took place, lacked the perception of such a code of world law. One can dispense with the principle, that a crime can be punished only if its elements are stated in advance only in the very few cases, in which the cruelty of the act is so evident that its deserved punishment is beyond doubt. This could hold true for crimes which, in consequence of certain measures of the abnormal amorality of the Hitler Regime, were during the last years not punished in Germany.

I have heretofore presented the evidence from the point of view of the valid international law and the Charter which you, Mr. President, in the session of 20 June 1946 have again stressed as the basis for legal findings in these proceedings. Up to now, the code of international law has been unable to solve the problems which are to be decided here. On the basis of these shortcomings, the second World War broke out. The repercussions of this catastrophe—which could not be prevented by this legal order—cannot be fully evaluated today. To prevent their recurrences in the future, this is the high aim of humanity as expressed in the treaty of London of 8 August 1945. That the objectives of this treaty could not be reached is shown with alarming certainty by the fact that on the very day on which the Charter of this Court was proclaimed as a new law of the world, the war between the Soviet Union and Japan broke out. Its possibility had been predicted to the allies of the Soviet Union six months prior to that. To justify it, it was pointed out that Russia had to settle an old account with Japan. In other words, this typifies a case of an unprovoked attack.

I have illustrated that the attack and the attacker cannot be defined by a general definition inside the sphere of the phenomena of reality. The attacker can only be branded by a World authority. This supreme organ of humanity must possess not only an actual but also a moral authority. Universal trust must be put in its impartial judgment. It must be an Areopagus which stands above the conflicting parties and before which these parties can only appear searching for justice, but not to participate in it as judges. We are in a period of transition from an old law, under whose rule the ruins around us were created, to a new code of world law, which takes shape but is as yet not morally and effectively consolidated. To judge and punish the acts which were committed by the former Foreign Minister Herr von Ribbentrop, his share in the happenings, the limits of his capability, and his own personal guilt is a difficult task, taxing human endurance almost beyond strength in this period of transgressions and development.

2. FINAL PLEA by Joachim von Ribbentrop

This trial is to serve the research of historical truth. As far as the point of view of German politics is concerned, I can say the following:

This trial will go down in history as a model example, relying upon legal formulae which up to now have not been known, to show how in all fairness one can circumvent the most pressing problem of twenty five years of human history and of our history, the Treaty of Versailles. Was it really expedient, then, to inhibit the conflict about an agreement which even those who had insight among the signers counted on to bring about evil? The wisest time already predicted from which of the faults of Versailles a new world war would arise.

More than twenty years of my life I devoted to the elimination of this evil, with the result that foreign statesmen who knew about this today write down in their affidavits that they had not believed me. They should have written that in the interests of their countries they could not believe me. I am held responsible for the conduct of foreign policy, a foreign policy which was determined by another. I knew only this much of it, that it never concerned itself with plans of a world domination, but rather with the doing away with of the consequences of Versailles and with the food problems of the German people.

If I dispute the fact that this German foreign policy planned and prepared for a war of aggression, that is not an excuse on my part. This truth is proved by the strength that we showed in the course of the Second World War and how weak we were at the beginning of that war.

History will believe us when I say that we would have prepared a war of aggression much, much better even if we did not intend to carry it through. What we intended was to take note our most elementary conditions of life, in the same way that England noted her own interests in that she made one-fifth of the world subordinate to her, and in the same way that the United States and Russia brought the largest continents of the world under their hegemony. The only difference between the policies of these countries as compared with us that parcels of land such as Danzig and the Corridor were demanded of us against our rights, whereas the other powers are accustomed to thinking only in terms of continents.

Before the establishment of the Charter of this Tribunal, even the signatory powers of the London Agreement must have had different opinions about international law and politics from those held by them today. When I went to Marshal Stalin in Moscow in 1939, he did not discuss with me the possibility of a peaceful settlement of the German-Polish conflict in the background of the Kellogg-Briand Pact; but rather he let me see that if in addition to half of Poland and the Baltic countries and Lithuania he did not receive the harbor of Lithuania, I might as well return back.

The conduct of war in 1939 was not considered an international crime against peace. Otherwise I could not quite explain Stalin's telegram at the end of the Polish campaign. This reads, "The friendship of Germany and the Soviet Union is based on blood which has been shed commonly, and has all prospects of being enduring and steadfast".

I should like to emphasize that even I at the time ardently wanted their friendship. Today the nuclear problem remains for Europe and Asia; who will dominate Europe and Asia, or will the influence of Russia on the Elbe, in the Adriatic or at the Dardanelles be held back.

I shall state that Great Britain and the United States today face this same dilemma as Germany faced at the time when the negotiations were being carried out by me with Russia. I hope with all my heart for my country that they will be more successful in their result.

Just what has been proved in this trial about the criminal character of German foreign policy? Out of more than 300 Defense documents, more than 150 have been turned down without cogent reasons. But the archives of the enemy and the German were inaccessible to the Defense.

Churchill's friendly hint to me that if Germany were to be too strong it would be destroyed will be declared irrelevant in order to judge the motives of the German foreign policy. The revolution cannot be understood the more if it is to be considered from the point of view of a conspiracy.

Fate made me one of the exponents of that revolution. I mourn these awful crimes which are soiling this revolution. But I cannot measure all of them according to puritanical norms, and all the less for I have seen that even the enemy even though after total victory, neither could prevent nor wanted to prevent atrocities.

Your opinion towards the theorist concept of the conspiracy may be, but from the point of view of the critical observer it is, only makeshift. Whoever stood in a decisive position in the Third Reich knows that it is an historic untruth and the author of the Charter of this Tribunal has proved with his inventions only what the background of his thinking was.

I might just as well assert that the signatory powers of this Charter developed a conspiracy for the elimination of a brave and highly developed people. When I look back upon my actions and upon my wishes, then I can conclude only this, the only thing of which I consider myself guilty, before my people but not before this Tribunal, is that my foreign political wish remained without success.

VI. WILHELM KEITEL

1. FINAL ARGUMENT by Dr. Otto Nelte, Defense Counsel

"We must approach our task with so much inner deliberation and mental integrity that this trial will later appear to posterity as the fulfillment of human longing for justice."

These words of Justice Jackson's in his opening indictment speech must be the guiding principle for all those who have been entrusted with the noble task of contributing to the search for truth in this trial. That this truth cannot be absolute, the Prosecutors, Justice Jackson and Mr. Dubost have already stated. The purpose of the indictment is not to determine the historical aspect, let alone the historical development, of this short but so tragically important period, but instead to find out whether and to what extent the defendants sitting on this bench partook in the events which have affected the entire world by their consequences and which have brought such indescribable misery upon it and not least upon the German people.

In this trial the prosecution once stated through one of its qualified spokesmen that it was its task to submit material that would incriminate the defendants, and to submit only such incriminating evidence. Thus in contrast to the principle of objective accusation which dominates the German criminal proceedings, it made clear its definitely one-sided standpoint in indictment which obliges the defense to submit all circumstances and considerations which are indispensable for an objective administration of justice. For this purpose it is first necessary to clarify certain concepts which are needed for the perception of responsibility and guilt. As far as concepts of International and Constitutional Law are concerned they have been examined and presented by Professor Dr. Jahrreiss.

With regard to the sphere of the soldier I should like to make some fundamental statements.

There have been repeated references here to the concepts of soldierly conduct, obedience, loyalty, performance of duty and patriotism. It is my belief that all men recognize these concepts to be good. But is it permissible to say that not all of these concepts are unequivocal. Thus are confronted:

"Best soldierly conduct" and "militarism",
"natural obedience" and "despicably blind obedience",
"the categoric imperative of the performance of duty" and
"the exaggerated sense of responsibility",
"the deep love for the country" and "chauvinism".

We see that all these concepts can run through the scale of good and evil. The origin and the essence of these concepts is everywhere the same, but the form they take on through tradition and education, and thus the effects they have, vary greatly.

However, if this is the case, who then should differentiate and decide whether the feeling is still in the realm of good or has already reached the sphere of evil?

We are all of us living in a world whose century old striving has aimed at the creation of order. Order is certainly a relative concept, too, but it is everywhere the establishment of the relationship of human beings to each other which guarantees the best possible means of living peacefully side by side in view of the intrinsic character of each country.

This holds true both for the state and for the relationship between nations.

Who should determine in this order what is right and what is wrong? The criterion for this might be, according to hitherto acquired knowledge, only a constitutional, i.e. a national one. The drawing closer of the nations in world traffic and general civilization brought with them the result that the various national concepts became adjusted to each other in spite of many differences. It must be admitted that this process of adjustment suffered a harmful set-back through certain National-Socialist doctrines and their methods. Nevertheless, the principle remains inviolable that the criterion of right or wrong must be a national one if order is not to be dissolved. The only thing worth striving for is the adjustment of nations and national fundamental concepts to each other as is now being attempted through world organization.

If the national criterion, i.e. the national judgment of good and bad, right and wrong, was well-established in any case up to now, the concepts were never deprived of their relativity, especially when national differences existed for other reasons. A convincing example of this is the opinion expressed about the resistance movement.

All countries celebrate what is considered to be the highest form of patriotism when someone risks his life for his country and exposes himself to the greatest danger. According to the Hague Rules of Land Warfare it is a fact that such a resistance movement is forbidden. We have here a clear example of the contrast between ethical and legal evaluation. This proves that there are no absolute concepts of good and bad, or right and wrong, and that above all written law there are unwritten laws which aquit the wrong doer because he obeyed higher laws. These higher laws, however, also depend on subjective and national—i.e. collectively subjective—considerations. If men believe something to be good or right this faith may come into existence out of an actually higher law, a truly, higher idea, but it may also grow out of a misled faith, out of a false idea. Who wishes to or who is able to judge whether a faith or an idea was or was not right? History has proven that usually the successful idea is recognized as right, to a certain extent because it is the judgment of God. I do not wish to decide whether that is always true. The question here, however, is whether the people whose guilt is to be judged, acted in good faith, in accordance with such an idea and such a faith. If divine judgment has shown this faith to be wrong the question remains open whether it was for comprehensible or explainable reasons that people could believe the idea to be good.

This question constitutes the problem which concerns not only defendant Keitel but also the entire German nation. According to the speech of the French prosecution not only the defendants in this trial are the really guilty ones but the entire German nation.

The extent and importance of this thesis are tremendous. Should the Tribunal—if only in the grounds for its decision—come to the conclusion that the entire German nation is guilty, every German for incalculable time will bear the brand of Cain which finally must lead to the destruction of this people, and its dissolution.

It has been stated most authoritatively that there is no intention here of accusing the entire German people. Through unconditional surrender we are left entirely to the mercy of the victorious powers. It was said however, that the verdict of this Tribunal is to be just. Here in this court it is not clemency or inclemency which are to be the guiding principle, but justice. Justice does not mean mildness. A verdict, however, will only be just if it takes into consideration all the circumstances which underlie the actions and conduct of the defendants. There is no excuse for what has happened and for what forms the subject of this indictment. I can only try to give you an analysis. The misery, the misfortune that has fallen on the entire human race is so great that words do not suffice to express it. The German people especially after having learned the catastrophe that has befallen the nations in the West and East and the Jews, is shaken with horror and pity for the victims. The German nation knows what this misfortune means; for it is stricken as hardly any other people is, not only in the military field but through the sinister consequences of air attacks, through the loss of millions of its youth in the field, through evacuations and escapes in ice and snow. We know, therefore, what it means to be in misery, to have to suffer. But while other nations are able to look upon this misery and misfortune as a chapter of the past and, in the protection of constitutional order, have the comforting hope of returning to an orderly existence and a happy future, there still rests upon this nation the gloom of despair. By affirming the guilt of the entire nation the verdict of the Tribunal would perpetuate this despair. The German people does not expect to be acquitted. It does not expect the cloak of Christian charity and oblivion to be spread over all that has happened. The German nation is ready to the last to take the consequences upon itself. It is willing to accept its fate and to do everything to participate in removing the consequences. It hopes, however, that the souls and hearts of the rest of mankind will not be so hardened that the existing tension, in fact the existing gulf between this nation and the rest of mankind will remain.

Your task, your Honors, is a terribly hard one. We not only speak different languages, all of us feel with the soul of our own country. Much of what has happened in this country will seem incomprehensible to you. The feelings of the German people in its different categories are not your feelings. One of the most essential points, especially in the case of the soldiers, seems to me the way of judging what is felt to be liberty. In this country, too, the ideal of liberty was proclaimed. All of us know that the most extreme form of liberty is anarchy. No state desires anarchy because it means surrender of its own existence. If, therefore, all countries agree that the absolute concept of freedom is never worth striving for and can never be sanctioned, there results perforce relativity of the concept of freedom. No concept has been so misused as the concept of freedom and yet every political system proclaims freedom as the greatest of all blessings.

I by no means wish to say that the concept of freedom as proclaimed by National Socialism was the right solution. What I do wish to say, however, is that National Socialism also knew the concept of freedom and made it clear to the people through propaganda that its conception of freedom was the right one. National Socialism was aided in this by the fact that under the effects of the Treaty of Versailles Germany could indeed make no claim to be really free. The limitations of its sovereignty were so pronounced and so evident that it was easy for National Socialism to proclaim the fight for the freedom of the fatherland. As long as the fatherland is recognized in the world as the highest earthly possession one will have to understand endeavors to keep this possession and one will not be able to disapprove of them even when it is an adversary who makes them. One may be of a different opinion as to the method which should be used for the realization of these endeavors, and as to how freedom is to be attained. This, however, is not decided by the individual, but by that person or those persons who hold the power in a state. Every human being wants something to hold on to in life, he must have it if he is not to fall into despair or anarchy. The national order is—besides the moral order—a firm support and the foundation of his existence and this gives him a feeling of security in his life and professional activities. It is the deep longing of all civilized men for order which finds its highest fulfillment in the institutions of the state. On the other hand the citizen must have confidence that the state, i.e. its official agencies, will safeguard law and order. In this respect it should not matter which party provides the guardians of its inviolable principles. That is just where the confidence of a nation as a whole expresses itself, namely by leaving leadership to the prevailing majority. National Socialism undoubtedly aimed at and succeeded in rousing the belief in wide circles of the German people that its endeavors were supported by the majority of the people. It thereby procured for itself the alibi of legality.

Far from all political considerations, as all the generals and admirals have testified here, the leaders of the Wehrmacht believed in the legitimacy of Hitler's government. It looked upon itself as the instrument of a legal government, as it did when the Kaiser, Ebert and von Hindenburg were Germany's representatives.

Like all tendencies, all forms of expression of a feeling, the feeling of patriotism and of a soldierly attitude bears in itself a tendency to become more radical and thereby to degenerate if external circumstances create an actual basis for it. We have experienced the exaggeration of sound national ideas and their development into national chauvinism and we can observe retrospectively how the sound soldierly idea was exaggerated by influences foreign to its nature and transformed into the militaristic way of thinking.

All these developments are not desultory, which makes them easily recognizable and regulated. The driving forces are mostly not apparent to those whom they concern. They are like a poison which acts slowly and unnoticed, and the effect of which finds some day a horrible eruption. It needs no special reasoning that a part of the soldierly and military person who is being geared to a possible war, is ruggedness, and in its potentiality turns into brutality. One often finds on the part of famous, and not only German war leaders, the standpoint that the brutal war is frequently the mildest one if it leads to a quick ending. This, of course, is desired by every war leader. Once the obstacles of peace are removed by the war, all that remains is brutality. It reveals the causes of total war and the source of the terrible disaster, which resulted from it.

The Defense Counsel's Task and the Evidence

The defense has a difficult task in this trial. The German people looks to Nurnberg—and with dissension in itself. Some are skeptical and partly hostile toward the defense because they believe the defense is favoring those whom they consider as war criminals and believe that the defense wishes to prevent that just punishment be meted out to the defendants. Others say this trial is just a show, at which the defense counsels act as dummies to give the trial the appearance of a judicial procedure. Accordingly, in the view of these Germans we shall make ourselves guilty of patronizing the enemy.

We have no reason to justify our actions because by our participation at this trial we are fulfilling an obligation in line with the precept of our calling, which needs no justification.

It consists of coordinating our efforts in the interest of clarifying the truth, the importance and effects of which on the German people is today incalculable, in getting to the bottom of the causes, and in answering the question of how all this could happen.

Only the clear recognition of the cause, the forces and the people that brought on the disaster over this world will create the possibility for the future of our people to find its way again to the rest of the world.

The task of this Tribunal is not to search for the political, economic and metaphysical reasons for this second World War, and not even to examine the flow of events in its entirety, but rather to determine whether and what part these defendants played in that which the victor nations made the object of these proceedings.

The task of the defense within the framework of their cooperation in finding the truth had to consist of examining which actual and legal points, if any, could be stated in favor of the defendants. It should be said here that with all the cooperation on the part of the Tribunal shown the Defense in producing their evidence, the actual possibility of bringing on defense material was extremely limited. Justice Jackson said in his basic prosecuting speech:

"The accuser and accused are obviously * * *."

[The Tribunal ruled that these statements were an attack on the trial and ordered them omitted.—Ed.]

The document governs the hearing of evidence before this Tribunal. Against that the witnesses remain in the background. The more essential it is that we examine these documents to ascertain the possibility of their utilization and their probative value. The Prosecution has submitted as evidence to a large extent official reports which are admitted according to Article 21 of the Charter. I intended to show with respect to a number of these documents that the value of such documents is only limited. But I shall limit myself to a few fundamental arguments in this connection trusting that you, Your Honors, in examining this kind of evidence will take my statements into consideration. These numerous official reports submitted contain factual statements which to a great extent are based on witnesses' testimony. These testimonies are not always related in the form of protocols but as summarizing reports. I do not want to dispute that these testimonies of witnesses are made as deposed in the reports. However, I will not do injustice to any of the witnesses who are not known by the Tribunal, whose testimony is hard to verify for lack of a personal impression, when I say that it concerns mostly very subjective attestations. There are a number of documents in which this is clearly recognizable, in fact stated and even such in which documents hatred finds its clear expression. I can understand the hatred of these hard hit people. The suffering they had to endure was so great that one cannot expect objectivity from them. I may, however, say, too, that such personal feelings are not conducive to render the testimony of these sorely afflicted a suitable basis for finding the real truth. I am thinking of the formula of oath so often heard here on the part of witnesses: "Swear that you will tell the truth without hatred or fear, the whole truth, and nothing but the truth."

These official reports often contain not only factual statements, but final conclusions and judgments. Insofar, the probative value of these official reports cannot be recognized. At the present these judgments go so far, that outside the sphere of those directly involved, they level reproaches against agencies, i.e. the OKW and Keitel, without it being possible to recognize from the document itself, on what the conclusion drawn rests. As long as it is a question of the indictment of an individual like the defendant Keitel, one must have recourse to documentary proof which yields concrete facts for responsibility, or which at least reveals casual coherence. Above all, it cannot suffice in order to consider Keitel's responsibility as proved, if in such reports crimes committed by soldiers and officers of the army or of the armed forces are alleged, and we derive responsibility on the part of the defendant, Keitel, from this fact alone, because he was chief of staff of the OKW.

It must be added that in these reports, military agencies have often been erroneously misquoted and confused, as for example, when the defendant Keitel is spoken of as the "High Commander of the Wehrmacht", which is called "OKW" (High Command of the Armed Forces) instead of "O.K.H." (High Command of the Army), etc. It is not always possible to decide to what extent it is a question of an erroneous conception on the part of the prosecution or whether it comes from a translation which is not in accordance with the meaning. For the purpose of examining the responsibility of the defendant Keitel, I wish to make clear to the Tribunal in a manner which excludes any doubt, what were the channels of command and competence and to this end, I have submitted two affidavits to the court:

a. "The channels of command in the East" (Document book II K 10).

b. "The development of the situation in France 1940-1945 and the military authorities" (Document book II K 13).

The latter affidavit has also been signed by the co-defendant Jodl. I will refer to these affidavits and make them the contents of my argument without reading from them.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

The reading of the general Indictment and the special Indictment in the trial briefs can be omitted here since, with the exception of the Jewish problem and the persecution of the Church, there is no part of the Indictment which the Prosecution has not raised against the defendant Keitel.

I should merely wish to point out that the original general Indictment holds Keitel responsible only for the period after 1938 and that, as the first point of the Indictment, Keitel is described as Chief of the Supreme Command of the Armed Forces of Germany. According to the evidence submitted by the Prosecution, Keitel was also held responsible for the period after 1933 although the American, British and French Prosecutions seem to have dropped the allegation that Keitel was Chief of the Supreme Command of the Army and the German Armed Forces. The indictment of Field Marshal Keitel is split, therefore, between the periods 1933 to 1938 and after 4 February 1938 until the end.

Herewith the defendant is not only indicted as a member of the conspiracy but is also accused of personally participating in all the crimes. This comprehensive indictment is a result of the space which the prosecution has devoted to the defendant in its statements. The name of no other defendant has ever been mentioned so often by the prosecution, as that of the defendant Keitel. Again and again we hear the words "Keitel—order", "Keitel's decree" and just as often "order of the OKW", "directives of the OKW" etc. in connection with Keitel's name as "Chief OKW" after 4 February 1938.

From this derives the very substance of the indictment, namely, the position the defendant Keitel occupied after 4 February 1938. But from it also derives the scope of the justification. Here, it is not a question of examining to what extent the defendant participated in the individual facts of the case, which in the long run arose from the so-called "Keitel—orders" or "OKW instructions", but what matters is the position he occupied, whether he took part and what part he took in the planning and execution of those orders and instructions, and finally and most important of all, whether his part in it was casual and culpable in the sense of the law which is to be applied here. It seems of consequence to stress from the outset several points of view which are important for the treatment of the case and for its appreciation!

1. The defendant has declared, that he admits the contents of the general indictment to be proved from the objective and factual point of view (that is to say not every individual case) and this in consideration of the law of procedure governing this trial. It would be senseless, despite the possibility of refuting several documents or individual facts, to attempt to shake the indictment as a whole. Therefore, I shall mainly confine myself to the questions concerning the subjective facts and the conspiracy and I will treat only those individual points which are of special importance as regards the personal participation of the defendant Keitel. The disproportion between the happenings and the defendant's present destiny is so great, that the defendant Keitel, out of this consideration would have to wish that such an attitude would expose him to the suspicion that he is fighting for his life, because he would have to fight at any rate out of moral constraint. But the defendant has already made it quite clear in his argumentation, that he is not fighting for his head but for his face.

2. The Defendant belongs to those men who came into the public eye through Adolf Hitler's death. From 1938 onwards he was in his closest circle and was his almost permanent companion. It is clear what that means for this trial. It has often been alleged by the prosecution, that by referring to the deceased the defendants desired to unload their own responsibility upon them. If the purpose of this trial be to obtain the most faithful picture possible of events and connections, it is not fair to start out by discrediting any mention of the deceased, who—as the prosecution knows—also are the major culprits. This is especially true for the defendant Keitel, whose position, influence and actions cannot possibly be correctly judged without throwing a light upon the person of Adolf Hitler and upon his relationship with Keitel.

3. As can already be seen from Mr. Justice Jackson's speech of indictment we are dealing here with an indictment against the National Socialist system. Actually, the indictment is a global indictment against this system, split into 21 individual indictments. The individual defendants are, to a certain extent more symbolic figures of the spheres of authority of the state which was ruled by this system: the Party, Cabinet and Wehrmacht. If I understand Mr. Justice Jackson correctly, he goes even further; he says: "Above all personal forces are nameless and impersonal forces; their conflict with each other makes up much of humanity's history * * * What are the real forces which are battling here in front of you?" This statement raises a problem which, Your Honors, cannot be left unmentioned at this trial, a problem which M. de Menthon also pointed out: The importance and influence of those forces which shape fate. Fate and guilt are two poles which do not exclude each other from their respective spheres; they are ranges which overlap so that there are spheres of life and spheres of effect in which the two forces are at work which make the world move. It can only be hinted at briefly here what forces are at work which shape fate, i.e. what forces cannot be considered as originating in the conscious will of the individual defendants a sense of national unity, historic events, opinions which are rooted in traditions and environment. Therefore, I will have to go into this background insofar as it is relevant to the defendant Keitel as a person and type of one of the groups under indictment because by this means only will you be given the possibility of obtaining a correct picture of the share which the defendant Keitel had in what happened.

4. I also want to state that everything I am going to say is said with the full agreement of the defendant Keitel and insofar as aspects and facts are stated which might exonerate the defendant

Keitel, it should be taken as a contribution towards the clarification of what happened and as an answer to the question of how it could happen. He does not wish to have his position or the part which he played in this drama minimized, but he would like to prevent at the same time a distortion of the picture of his character. The defendant stated already on the witness stand that he was grateful for the opportunity this trial afforded him to give an account to the world public and the German people, of what he did and why he did it. He wishes to help to ascertain the historic truth of what happened.

I consider it my obligation to make known this opinion of the defendant Keitel because such an attitude, based on such reasons, made it considerably easier for me to conduct his defense. It was and is clear to the defendant Keitel, if one considers the horrible consequences and monstrous deeds which—without raising here the question of guilt—undoubtedly were committed by German people and which can indisputably be traced back causatively to orders and directives with which Keitel came into contact in some form, then one feels guilty without thinking about whether this is a guilt in the legal sense or the tragic feeling of being linked by fate with the causes and, thereby, also with the consequences.

The Planning on the Basis of the National-Socialist Program

The prosecution has maintained: "That at one time all the defendants had banded together with the Nazi Party for a plan about which they, indeed, knew that it could be materialized only by the outbreak of a war in Europe."

With regard to the defendant Keitel, it is said that from 1933 on he took active part in this conspiracy. To prove its thesis the prosecution stated:

a. That the National-Socialist program in itself, i.e. according to its wording and meaning could be materialized only by using force;

b. That the defendant Keitel recognized or should have recognized it;

c. That with this knowledge, he, together with others, especially with the co-defendants, planned and prepared aggressive wars.

As regards these statements I would like to call the Tribunal's attention, first of all, to the principal part of Mr. Justice Jackson's bill of indictment in which he deals with the program of the Party. He mentions there a number of points of the program of which points he says: "Naturally, those were all aims which were legally unimpeachable." At a different point he says: "I do not criticize this policy, I wish it were generally recognized." Naturally, this acknowledging criticism is subject to the one limitation: "As long as these aims would be achieved without an aggressive war." According to that the prosecution itself does not presume that the wording and meaning of the Party program let the normal person recognize that these party-political aims could be materialized by use of force only.

I do not wish to repeat what, in this connection, was said by the individual defendants at their hearings in court; especially convincing appeared to me what Dr. Schacht stated on this subject. He concludes his critical evaluation of the Party program with the words: "That is essentially the contents of the National-Socialist Party Program and I cannot find that something criminal lies in that." I quote this statement especially because it shows how this program and its recognizable objectives effected a person who may be characterized as intelligent, realistically thinking, free from emotional impulses in politics, of economic far-sightedness and of ability to judge.

If this personality did not recognize that the Party aims were to be materialized by use of force—how was the soldier Keitel to come to such a realization?

Keitel was an active officer. As such he could not be a member of the Party. The officers were prohibited from any political and party-political activity. The Wehrmacht command was intent on keeping the influence of Party politics away from the Wehrmacht. This was true both for the time before 1933 and afterwards. Hitler himself confirmed this principle because he clearly recognized that the time was not yet ripe for giving the corps of officers, let alone the general officers, political character. According to tradition and interpretation of their profession, these higher officers had a "national attitude", as one used to say, and they welcomed the national points of the program which were put into the foreground by Hitler, they were glad about the cooperation of the Wehrmacht and without hesitation placed themselves behind the government led by Hitler when it proclaimed the fight against the treaty of Versailles, especially against its military - political clauses. An agreement going beyond these aims or possibly a union with a political object in view did not exist. The generals, among them also Keitel, thought no different from millions of Germans who were not Party members or who were opponents, but who regarded the national aims as self-evident. Now, one cannot fail to see that it is something else if millions of Germans who have no influence, support that part of the program relating to the national aims or the high general officers who led the Wehrmacht. Furthermore, it cannot be overlooked that the materialization of these national aims carried with it the danger of a war. But the state of things seems to me to be such that the generals did not see the danger of war in the fact that Hitler wanted to realize these national aims by an aggressive war, but they saw the danger rather in the fact that an assertion of these aims would bring about sanctions by the former enemy powers. The idea of an aggressive, warlike realization was far from the generals' minds for absolutely compelling reasons of military impotency. I shall later deal more in detail with this problem which is closely connected with the rearmament. Here is only important that the circles to which Keitel belonged

1. Had no contact with the Party program.
2. Had no relationship with Party circles.
3. Sympathized with a part of the Party program because it corresponded to their national attitude.
4. Did not think of materializing these national points by an aggressive war, because it would have been hopeless in military respect.

Now one could argue that although the generals themselves did not think of waging an aggressive war, they recognized or should have recognized that Hitler had the intention, if not now, but in the near future, of waging an aggressive war.

The prosecution believes to be able to presume that the defendant Keitel had this knowledge from 1933 on. The argument of the prosecution that this knowledge is the same as the knowledge of the National-Socialist program has been refuted; the same holds true of the knowledge of the book "Mein Kampf", even if one assumes he possessed the book. Therefore, the question is only whether Keitel had knowledge of Hitler's intentions regarding an aggression for other reasons. For the period up to 1938 Keitel could not have obtained knowledge from Hitler himself, because Keitel spoke with him late in January 1938 for the first time.

The speeches which Hitler made before that time, just as those of the other Party leaders were unambiguously aimed at preserving peace. Looking back one may call it propagandistic camouflage of the opposite intentions. Would that be the case, then this camouflage successfully deceived not only many millions of Germans, but also the foreign countries which were partly critical and partly hostile towards National Socialism.

Keitel believed the protestations of peaceful intentions, saw their honesty confirmed also by official proposals of disarmament and treaties with England and Poland. He believed them the more so because, as has already been said, an aggressive war had to appear to him as an impossibility.

The co-defendant von Neurath, too, declared frequently that all his information and knowledge of Hitler's policy up to 5 November 1937 justified his firm conviction that Hitler did not want to realize his political aims by force or aggressive wars. It was only by the speech of 5 November 1937 that this conviction of von Neurath's was shaken.

In the arguments by Dr. Schacht's defense to which I referred, those facts were presented which show a contradiction between the former conduct of the victorious powers and the thesis which the prosecution upholds on this question. By their official relations and beyond them the victorious powers showed that, despite the knowledge of all circumstances the defendants are being accused of, which knowledge has to be assumed, they (the victorious powers) did not believe in Hitler's intentions and/or did not recognize these intentions of realizing his aims by aggressive war.

The prosecution now accuses the defendant of having known or having had to know such intentions of Hitler. This does not appear to be convincing and I can leave it to the Tribunal which—if all possibilities are taken into consideration—had better possibilities to get information on Hitler's true intentions. I believe the defendant Keitel may claim for himself the same good faith and the same ignorance—unless this knowledge or even the participation results from other circumstances. Such circumstances during the years 1933 through 1938 may have been Keitel's activity in connection with the rearmament and in the Reich Defense Committee (Reichsverteidigungsausschuss).

The Rearmament

The charge of illegal rearmament includes two facts which have been summed up by the prosecution:

1. The secret rearmament by eluding the Treaty of Versailles,
2. The rearmament with the purpose of planning wars of aggression.

For a judicial consideration however, these facts must be kept strictly apart; since they are different with respect to cause and effect they must also be evaluated legally from different points of view.

The time between 1933 and 1938 is a fateful period, a period of development and conversion. The forces of the hitherto existing order are struggling against the new powers which have not yet taken a definite shape. Everything is in fermentation. The aims remain obscure: they are camouflaged by the existing nationalistic tendencies which have been taken over. By clever propagandistic utilization of these tendencies the psychological basis for the aims pursued by the new lords is being created without being noticed by those concerned by it.

Here lies the problem of the Armed Forces leadership and of the defendant Keitel during this period, with which I am going to deal now.

The secret rearmament in violation of the Treaty of Versailles

This problem cannot be solved without duly taking into consideration Germany's military position. In judging the then Colonel Keitel another consideration enters the picture: how the special sphere to which he belonged was affected by this situation. Keitel considered the Treaty of Versailles and especially the military clauses as a humiliation of Germany. He considered it a duty towards his country to collaborate in netting an end to this situation. He was convinced that the Treaty of Versailles, because of its impossible military and territorial stipulations, would have to be revised some day. Such a revision appeared to him imperative in the interest of justice, as well as reason, if a lasting world-peace was to be preserved. On the basis of this conviction, he believed that as a German and a Soldier, he was entitled, in the official capacities in which he acted during this period, to interpret the military stipulations of the Versailles Treaty literally even if this was in contradiction with the purpose of a stipulation. He justified this before his own conscience by considering that the stipulations limited the possibilities of development in an unbearable manner, that is, in a manner completely insufficient for an effective defense.

Without having actual interests, he did not consider it wrong for Germany under the given circumstances to construct submarines in Finland not for herself but with the purpose of gathering experience and training specialists; or to operate construction offices in Amsterdam in order to observe the progress achieved in the field of aeronautics and to make herself useful without actually building planes.

As symptom of the way democratic Germany of that time thought—without consideration of position and party—was Dr. Bruening's statement, which on 15 February 1932 was broadcast over all USA radio stations on the occasion of the meeting of the disarmament conference. I am going to quote the following passages from that speech:

"The inner-political fights in Germany are very sharp in their outside forms to be sure; but this sharpness must not lead one to overlook the fact that despite many things which cause division there exist indisputably things of common possession, also. On the two decisive foreign-political questions of today, the questions of disarmament and reparations uniform opinions prevail among the German people. The demand for equal rights and equal security is shared by the entire German people. Any German cabinet will have to uphold these demands. The fact that the fight of the parties over the roads which our politics must travel is, perhaps, sharper in Germany today than in some other countries, is a result of the deep misery which presses heavily on Germany and is deeply upsetting the people's soul."

In connection with this point I also refer to the testimony which the co-defendant von Neurath gave on 22 June 1946. These words which Bruening spoke, prove that there was a demand which was upheld by the entire people irrespective of the difference in parties: The demand for equal rights and equal security.

The objection to that is: A demand even if upheld by the entire people does not in itself create the right to violate or circumvent opposing contractual regulations.

In principle, one will accept that. However, things were not as simple as that. I do not wish to presume upon a "basic right" of all countries according to which every people must have the right of creating for itself a certain state of defense. But even if one does not want to recognize such a "basic right", one will, perhaps, understand the state of emergency which actually exists if a country is so limited in its military potential that it is not only liable to military attack by any neighbor, but also politically condemned to impotency.

In the course of the hearing of evidence the Tribunal had occasion to recognize that this was true with regard to the situation in which Germany was in 1933.

I want to call your attention to the following passages of the Marshall report which was submitted to the Tribunal. The following passages written by this outstanding soldier who summarizes the experience of a patriotic and military life as regards the point discussed here under the title "Rearmament", as follows:

"Nature is inclined to pass over weak people. The law that only the strong survive, is generally recognized * * *"

"The world does not take serious the wishes of the weak. Weakness is too great a temptation for the strong."

"Above all, it seems to me, we must correct the tragic misunderstanding that a policy directed at security is a war policy."

The best witness with regard to this question which is so important for the defendant Keitel, is the book by the English Major General A. C. Temperley (Collins Publishers 1938) "The Whispering Gallery of Europe" for which the English Foreign Secretary of the second world war, Anthony Eden, has written a very friendly, agreeing preface; it carries particular weight because Temperley reports and judges retrospectively from the year of 1938.

[The Tribunal agreed to take judicial notice of these quotations without having them read. Defense Counsel thereupon read the following paragraph but omitted several pages of quotations.—Ed.]

[Page 165]

4. "I also name the general staffs because there is no greater illusion that they (the general staffs), taken as a whole, are in favor of war. I know the general staffs of many countries very well and have never known any general staff which would have glorified war or would have wished for war. They knew too much about it. If they advocated strength, it was because they believed in the idea that armed strength can prevent war."

In this connection I want to refer also to the statements by the following statesmen: Paul Boncour, Henderson, Briand and Cecil; these statements were submitted by Dr. Schacht's defense (Document book Dr. Schacht No. 3, Schacht Exhibit No. 12) on the same subject matter and were accepted by the Tribunal; I also want to refer to the book by Viscount Rothermere: "Warnings and Predictions" (Page 100).

In examining and deciding whether the defendant Keitel guiltily violated the military clauses of the Treaty of Versailles in the meaning of the indictment the Tribunal will have to consider the facts which have been presented. Any individual charges on this point have not been made.

It is unquestionable that from 1933 on rearmament took place in the Reich. The defendant Keitel has admitted that and he stated that in the official positions he held up to 30 September 1934 and from 1 October 1935 on he participated in this rearmament in accordance with the functions incumbent on him. Like everything the Germans do, the rearmament, too, was well conceived and organized. The prosecution collected data for that: Especially Document No. 2353–PS and the transcripts of the sessions of the Reich Defense Committee (Reichsverteidigungsausschuss).

During the judicial collecting of evidence the total picture of this period from 1933 to 1938 was not clearly defined. The prosecution arranged its presentation of evidence retrospectively and drew a conclusion from the results of the war to the motive of the rearmament, but at the same time it deduced from the fact which cannot be denied and has not been denied, namely that this rearmament could not be planned and carried out by one man, that it (the rearmament) constituted a joint plot for the purpose of aggressive wars.

Where is the decisive criterion in military armaments or in preparations of a different kind for the case of war from which the conclusion may be drawn that these measures have aggressive character, i.e. are aimed at aggressive war?

In principle from the armament itself nothing can be deduced for the charged intentions; it (the armament) may, in fact it must look just the same if it is carried out for security and defense as it does in case of aggressive war.

Therefore, if the intention of rearmament for the purpose of a plot is to be determined, distinction must be made between:

a. Armament and preparations of measures which must be taken for the case of a mobilization becoming necessary, in order to be ready for defense at any time,

b. Rearmament and ordering of measures which exceed quantitatively or qualitatively the volume under *a* to such a considerable degree that from that fact the intention of the political leadership to begin a war will become noticeable to the party concerned, in which case the political question of whether an aggressive, defensive or preventive war is intended, may be disregarded.

Therefore, in the last analysis, the decisive question will be whether in connection with these measures the intention of the planning for an aggressive war was expressed or had become noticeable by other means or whether the measures because of their nature and volume demand the conclusive deduction that an aggressive war was prepared here.

In retrospect the events are presented as the logical chain of a development according to plan. In reality, not only were Hitler's far-aiming intentions and his planning imputed to an actual happening in which, objectively viewed, a certain causality seems to be inherent, but also the knowledge and approving support of cooperating circles were imputed to it. There can be no dispute over the statement that the economic capacity of a country, which in its totality must be regarded as armament for the case of war, will eventually get to a point which must be considered of decisive importance for solving the question of when the rearmament, i.e. the status of the entire industry essential for war, exceeds the capacity of armament for defense.

In making these considerations it has to be taken into account especially for the defendant Keitel as a soldier that until he took over the office of chief of OKW on 4 February 1938, he had not held a decisive position. Now, what part did the defendant Keitel play at that date?

a. In the field of rearmament with regard to materiel and personnel.

b. In the field of administrative and—as charged by the prosecution—military-political rearmament which was dealt with under the heading of "Reichsverteidigungsrat" (Reich Defense Council).

[Defense Counsel voluntarily omitted several pages of material on historical development of the organization but asked the Tribunal to take judicial notice of it.—Ed.]

The Justification

The prerequisite of modern warfare is not so much the exploitation and organization of the manpower of a country into military formations, but it is essentially a problem of industrial capacity and of its appropriate utilization for the production of all necessary raw materials.

This process must of necessity precede any rearmament and requires expenditure of money and even more of time. (Establishment of industrial equipment stocks.)

When Germany proclaimed its equal rights as regards its need for national defense—that is, the supreme importance of its defense—it did not have the means to help its material rearmament as they had been taken away on recognition and execution of the disarmament plan. It has been confirmed here during the trial on different hands that first 10, then 7 to 8 years were reckoned on and foreseen in order to give material equipment in the hitherto prohibited modern weapons and supplies, especially munitions, to the peace time Wehrmacht which had been disclosed to the world with the proclamation of freedom in national defense in 1935. This becomes comprehensible if one considers that even the USA with its unlimited means, which were not impaired by the effects of war, required 4 to 5 years for the necessary conversion and rearmament in this war. It results from this that rearmament, if it is intended to exceed the limits of defensive armament, is only to be achieved gradually, in the case of nations which, like Germany in 1934, have no armaments.

First stage: Creation of the prerequisites with regard to industries and raw materials (capacities) for the production of the war supplies.

Second stage: Delivering of orders to the armament industry for the first equipment of the peace-time strength of the Wehrmacht and execution of these procurement orders within the framework of the means provided by the annual budgets.

Third stage: Procurement of the ammunition and weapon supplies to be stored for the equipment of a mobile Wehrmacht, which is to be developed in the case of war from the permanent peacetime strength in accordance with the efficiency in manpower of a nation. These supplies are to include the necessary replacements during the war.

If one considers that in 1934 Germany had no modern weapons, no submarines and no military aircraft at its disposal, it can well be believed that any soldier of judgment had to assume that under the given circumstances there could be no thought of a war, let alone a war of aggression.

Accordingly, the tasks which the defendant Keitel assumed in his official capacity of chief of staff of the Wehrmacht bureau, must be considered as purely preparatory and organizational. Keitel is of course responsible for General Thomas, chief of the defense economy staff. The technical details and the extent of his activity can be seen from document 2353–PS, which is correct in essence despite the fact that Thomas, in the declaration prefixed to this historical document, now wants it to look as if he had altered his original notes and given them a more favorable turn to please Hitler, this in case of the arrest he apprehended. This does not correspond to the facts. What Thomas wrote, proves according to defendant Keitel's opinion, that a "war armament" with mobilization of the industrial capacity and its conversion toward war economy began only at the beginning of October 1939. It further proves, that the statements of the defendants which were examined here, as far as they were connected with this rearmament, and especially Dr. Schacht until 1937, are in complete agreement on the following point: that it cannot be admitted that in this period wars of aggression were desired and according to the momentary state of armament they must have appeared impossible.

But the rearmament in man-power also shows the same picture during this period. The evidence has demonstrated that until spring 1938 only 27 peace time divisions were poorly equipped and that 10 to 12 reserve divisions were in preparation; at that time the Wehrmacht had no other supplies nor armaments at its disposal. If, despite this fact, and without general mobilization it succeeded by the fall of 1938 in preparing an army of almost 40 divisions for the aggression against Czechoslovakia, when at that time it had the poorest protection on its western front one can see what was the maximum war potential in those days. Under such circumstances and in knowledge of the armament situation and war potentials of neighboring countries, which were mutually united by alliances and assistance pacts, none of the generals of the old school could ever think of occasioning a war. The fact, that already one year later, in 1939, the state of German armaments was substantially improved, must primarily be traced back to the occupation of Czechoslovakia.

Finally it must be pointed out, that during this period there was no strategic plan for any aggression whatsoever. General Jodl has declared on the witness stand, that when in 1935 he came to the Wehrmacht bureau, no plan nor anything similar was in existence, except what was foreseen in the case of internal unrest. The occupation of the de-militarized Rhineland zone was not planned, but was improvised by Hitler.

The "Initial Assembly and Combat Directives of June 1937" is a general instruction for eventual and possible military conflicts.

For the sake of completeness I must also call attention to document EC–194. This is an order issued by the supreme commander of the Wehrmacht, v. Blomberg, on the subject of aerial reconnaissance and the observation of submarine movements during the occupation of the Rhine. Keitel signed and forwarded this order.

The Reich Defense Council

The Reichswehr had a permanent force of 100,000 men, as had been established by the Treaty of Versailles. It is indisputable, that in view of the size of the Reich, its unprotected borders and the way East-Prussia was cut off, this figure was absolutely inadequate for creating a feeling of internal security and the possibility of defense in the face of an attack from the outside world, such as may be considered for any country and nation an elementary right. This state of insufficiency which had been provided by the military clauses of the treaty of Versailles, was discussed before 1933 already with a view to improving it without using the actual soldiers for it. An examination was made and it was found that in case of a mobilization a series of tasks could be taken over by the civil ministries. Hereby, it was a question of tasks of a purely defensive nature, which cannot in any way be considered aggressive, they were tasks of national defense, and principally the following:

1. Protection of the frontiers by reinforcement of the customs-service.
2. Postal security by Reich post agencies (Repeater Offices),
3. Railroad protection by Reichbahn personnel,
4. Laying of cables instead of overhead telegraph lines,
5. Construction of railroad viaducts and elimination of grade crossings on important traffic roads.
6. Construction of frontier fortifications in the east, Oder-

Warthe line, Pommeranian line, Oder line (Terrainexpropriation),

7. Improvement of the maritime traffic with East-Prussian and of the railroad transit through the corridor,

8. Fortifications in East-Prussia,

9. Reinforcement of the frontier protection in East-Prussia,

10. Preparation by the Reichsbahn of mobile loading ramps,

11. Reinforcement of the "Coastal" customs service.

12. Development by the Reichpost of the radio network (amplified transmitters and receivers)

13. Manning of permanent army signal stations with post office personnel.

14. Relieving the Reichswehr from the charge of detaching soldiers for duties which can be carried out by civilian personnel.

15. Protection of the frontier passages by the local authorities (Landraete).

16. Coordination of motor vehicles etc.

The advisory body for these tasks and their execution was, up to 1933, the committee of advisers (Referentenausschuss). It consisted of advisors coming from the different civil ministries, who after being recognized by the ministry of the interior (Severing up to the end of 1935) met for conferences at the Reich ministry. The Reichswehr minister charged the then Colonel Keitel to direct these meetings. At the latter the advisers received and discussed the desires of the Reich ministry as regards the aforementioned tasks which the individual ministers could take over in case of a mobilization.

During Minister Severing's time this cooperation worked without friction in order to satisfy as far as possible the wishes of the Reichswehr minister, and it went on in the same way after 30 January 1933. The scope of the tasks and the composition remained the same. When on 4 April 1933, a Reich Defense Council was established through a resolution of Hitler's new Reich government, the committee was maintained, it changed only its designation: the committee of advisers became the Reich Defense Committee, it did not change its field of action and was not charged with any new competency. It only grew in size as it went on developing, especially after the introduction of general military service. Now as before, the Reich Defense Committee was a body, which had to give advice in questions of national defense concerning the civilian sector and which had to be prepared and also partly taken over by the civil ministries. For this count of the indictment it must be made quite clear, that after 4 April 1933 Keitel's position did not change either, and especially that he did not become a member of the Reich Defense Council.

The Reich Defense Council, which has taken up a lot of room in the statements of the prosecution, may be considered as factually non-existent according to the result of the evidence produced —later on I will come back to the time after 1938—in any case, the prosecution could not prove that there was any session of the Reich Defense Council during this period. The protocols submitted dealt without exception with the sessions of the Reich Defense Committee and the members of this committee reported to their competent ministries, which in turn, had the opportunity to give, in the framework of the cabinet, the necessary concrete form to the suggestions and proposals discussed in the Reich Defense Committee. For this reason there were never any sessions of the formal legally existing Reich Defense Council, so that witnesses could rightly say that the Reich Defense Council existed only on paper.

Up to 30 September 1933, as colonel and section chief in the War ministry, and later, from October 1935, as brigadier general (Chief in the Wehrmacht bureau of the Reich war minister), Keitel was a member of the Reich Defense Committee.

Therefore, from 30 September 1933 to 30 September 1935 he was not at the war ministry, and thus had no function connected with this count of the indictment. During this time also he did not participate in sessions of the Reich Defense Council, the protocols of which have been presented by the prosecution as having a specially probative value.

The session of 22 May 1933, denoted as the 2nd session of the working committee of advisers (Referenten), was the last session in which Keitel participated before being transferred to duty with the troops. The first session after his transfer to the Reich War Ministry was held on 6 December 1935; it is put down as the 11th session of the Reich Defense Committee. And, therefore, in the examination of Keitel's responsibility, although one has to exclude the above protocols (Document EC–404 and EC–405) as well as the work done in general by the Reich Defense Committee during the two years of sessions 3 to 10, I will nevertheless make them the subject of my statements, as it is from these protocols that one can see what the Reich Defense Committee was doing.

Only the knowledge of these protocols makes it clear, why the creation of an institution, which exists in this or some other form in every country, and which serves the purpose of national defense deemed legitimate by every country has now been presented as an important argument in the evidence given of plans and preparations in view of aggression.

The protocols of the sessions of the Reich Defense Committee in 1933, and 1935, reveal the character of the work as that of preparations for the event of war. But it is likewise evident, that it is a question of preparations which were intended to bring about a more perfect degree of readiness in national defense in case of mobilization.

If the "political situation" is mentioned twice, these allusions point to the fear in neighboring states of military sanctions. Reference is made to the case of Abyssinia, which led to sanctions against Italy.

Everything is rooted in the thought of overcoming that state of military impotency, which made it impossible to secure the open frontiers of the Reich.

The ever-returning necessity for secrecy can only be considered as fear deriving from the situation at the time that the publishing of measures, though of a defensive nature, would produce preventive measures on the part of the victorious powers (Italy).

That these suspicions were well grounded is shown by the intransigent attitude of certain states after the complete disarmament of Germany.

This question is important for Keitel's attitude, for he affirmed that the conclusion drawn from the prescribed secrecy was erroneous and that the secrecy was a proof of a bad conscience, and the bad conscience a proof of knowledge of illegality.

The Committee of the Reich Defense never insisted that it was an advisory body in matters of national defense insofar as the civilian sector was concerned by a mobilization. At no time did it ever indulge in discussions concerning rearmament as regards manpower or material or concerning plans of aggression.

The prosecuting authorities have tried in one instance to show proof that the Committee of Reich Defense was contemplating plans for aggression. Here we deal with the liberation of the Rhine River. This came up in Goering's testimony.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

The true nature of the Committee's activities is set out quite simply and clearly in the "Book of mobilization for the civilian administration". (Documents 1639–PS and 1639a–PS). It refers to the result of discussions between all the members of the Reich Defense Committee and is an appendix to the mobilization plan of the Wehrmacht as well as to that of armaments.

These three mobilization plans taken all together form the basis of your decision. You may see from them whether the prosecution is right in its supposition of a total planning of aggressive wars—or whether the defendant Keitel was right when he stated during his hearing: "What has been discussed and planned here is what every country is entitled to do and what the responsible agencies are bound to do, if they do not wish to violate their most sacred duty, namely the safeguarding of the security of their land".

The decision of 4 February 1938 was fateful for General Keitel as well as for the German Wehrmacht.

For Keitel who could not yet form an opinion of the newly-created office of the "Supreme commander of the Wehrmacht" with the high sounding name; for the Wehrmacht, which lost on that day its (relative) independence. Hitler broke down the last barriers between himself and the Wehrmacht—the nation in arms —by removing both the Commander in Chief of the Wehrmacht and the constitutionally responsible Reich Minister of War. This truly portentous decision became fatal for Keitel and the German nation, though at the time of its occurrence this was not realized by the participants. That they may be blamed for not realizing it, it is easy to say now in retrospect. At the time, everybody who was not an inveterate sceptic or pessimist, had to base his judgment on the development of things in general and on the strength of the personalities involved. Neither the one nor the other could be clearly seen on 4 February 1938.

For the defendant Keitel, who did not know Hitler personally in those days and who met him for the first time as man to man in the preliminary discussions, the decision was none of his own. Hitler assigned him to the newly created office of Supreme Commander of the Wehrmacht and Keitel accepted it. Even if we disregard entirely the human emotions connected with such a seemingly brilliant promotion, there was no reasonable ground for the Chief of the Wehrmacht office in the Reich Ministry of War (RKM) to decline the offer, since von Blomberg himself had proposed him. The way Hitler considered this office could not be discerned by Keitel.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

Dr. Lammers says the following about the origin of the Fuehrer's decree of 4 February 1938: "In the future I shall not have any Minister of War neither will I have in the future a Supreme Commander of the Wehrmacht, to stand between me, the highest commander, and the other high commanders of the Wehrmacht."

Field Marshal von Blomberg declares in the affidavit I have submitted: To question 24: "He asked for a suggestion for the assignment of a "Chef du Bureau", who would direct and carry out current affairs under him and thus under Hitler's responsibility. I named Keitel, who, under me, had carried out this office very well." To question 27: I proposed Keitel as "Chef du Bureau", believing that I had put him on the right job. To question 29: Question: "Was it not Hitler's intention to create a tool for himself in the person of Keitel, whose capacity for organization and hard work seemed to him valuable, as an executive organ for his decisions and command?" Answer: "This question is emphatically confirmed by me. Hitler's original intention at that time was most certainly to have at his disposal a trustworthy subordinate organ and in no way an adviser, who claimed some responsibility."

The decree of 4 February 1938 regarding leadership in the Wehrmacht is known to the Tribunal, so I do not have to read it to you. It results therefrom for the position of the defendant Keitel and the questions of his competence and responsibility as well as from the hearing of witnesses (statements of Goering and the Chief of the Reich Chancellery, Reich Minister Dr. Lammers, and affidavits of Grand Admirals Doenitz and Raeder) that:

1. Hitler did not want either a responsible minister of war, or any other person but himself to exercise the commanding authority over the entire Wehrmacht. He united in his own person both of these institutions by declaring that in regard to the commanding authority he would from now on exercise it directly and personally as well as the functions of the Reich Minister of War, which were to be administered by Keitel under his instructions.

2. Hitler also created a military staff as advisory council in military technical matters. He designated it as the High Command of the Wehrmacht. It was nothing more than the military chancellery of the Fuehrer and Highest Commander. Such chancelleries were already existing as Reich Chancellery, Chancellery of the President and Party Chancellery. The defendant Keitel was assigned to the the post of Chief of the military chancellery with the title Chief of Staff of the High Command of the Wehrmacht (named for short: Chief OKW).

3. Hence it follows that the OKW was not intended to be an intermediary agency between the supreme commander of the Wehrmacht and the three Wehrmacht sections. The contrary assumption of the prosecution, which is connected with a graphic representation, is founded upon an erroneous judgment. An intermediary level between the supreme commander and the three high commanders of the Army, Navy and Air Force as existed before the 4 February 1938, with rights of its own, no longer existed

now. The OKW, in which the defendant Keitel was the Chief of Staff, was no independent military agency or authority, but exclusively Hitler's military-technical staff and his war ministry office. The OKW had no independent authority whatsoever, neither the power to issue orders nor the military authority. Therefore, the OKW could not issue its own orders. All instruction decrees, general directions or orders issued by the OKW were rather the expression of the desires of the supreme commander of the Wehrmacht. The commanders-in-chief of the three Wehrmacht branches were always aware of the fact that no intermediary level existed between them and the supreme commander. They never considered or recognized the OKW as such. This is confirmed by the affidavits of the co-defendants Grand Admirals Doenitz and Raeder as well as by the testimony of Reich Marshal Goering and Dr. Lammers. It is an entirely erroneous conception that the OKW, or in this case the defendant Keitel as chief of the OKW, would have had the authority to issue instructions or orders on his own. Every official business relation, oral or in writing, which went beyond an exchange of ideas with other military agencies or authorities was subject to the exclusive decision of supreme commander himself. The OKW was merely the executive staff of the supreme commander.

4. Therefore, when documents issued by the Supreme Commander or by the OKW show signatures or initials of the defendant Keitel (or those of a division chief or a section chief, in the OKW), one can derive therefrom the conclusion that an own, independent authority issuing orders existed. In each instance it was a case of taking notice of, forwarding or transmitting the orders of the supreme commander himself. Because of the heavy claims on Hitler's time in his position as Chief of State, Reich Chancellor, Party Leader and Supreme Commander of the Wehrmacht it was impossible to obtain always the personal signature, unless it concerned matters of particular importance or fundamental significance. It has to be noted that in all cases Hitler's personal decision or approval had to be obtained.

If in this state of affairs, the prosecution advocates the conception that because of the signing of documents or because of existence of initials the defendant Keitel is co-responsible for the factual contents of the documents, this cannot be accepted. It would be going by the letter of the law to derive the responsibility of the defendant Keitel as chief of the military chancellery from his forwarding or signing of orders, instructions and such, a responsibility which, in my opinion, can be laid only upon that person who issues or brings about the order by virtue of his authority.

A real responsibility for this could be laid upon the defendant Keitel only in case it would be proven that he willfully and casually participated in deciding these orders, instructions, etc.

5. In order to clarify as much as possible this question which is so decisive for the defendant Keitel I would like furthermore to point out the following:

The instructions which were of fundamental significance for the planning of military operations, are operational orders issued to the Commanders-in-Chief of the three Wehrmacht branches by the Supreme Commander in this capacity. Before these instructions were composed Hitler discussed with the competent OKW officers, also with the defendant Keitel, the military-technical aspect of the order. The instructions, without considering the opinions manifested by the individual officers, were exclusively the expression of the Supreme Commander's wishes.

They were not intended for the OKW but for the Commanders-in-Chief of the three Wehrmacht branches to whom they were forwarded through the OKW. Thereupon the three Wehrmacht branches for their part ordered, on the basis of the general instructions, the details for the carrying out of what the instructions stipulated. Therefore I shall not refer in this connection to the statement of the Charter according to which the carrying out of orders is not accepted as a legal ground for exclusion, because the transmission of the order was not an order issued by the OKW to the Wehrmacht branches but the forwarding of the expression of the wishes of the Supreme Commander of the Wehrmacht. The order directed to the OKW, if one wants to express it that way, referred in all cases to the elaboration upon some desire expressed by the Supreme Commander and to the purely external act of transmitting the ready-made decision without having the authority of expressing an opinion on this decision.

6. It must be assumed that the prosecution, perhaps influenced by the defendant's rank of Field Marshal, did not recognize correctly this position of the defendant Keitel. This rank was in no proportion to the real authority of the defendant to issue military orders. One is inclined to imagine that a General Field Marshal is always a military chief. However as we have seen the defendant Keitel had no authority to issue orders, whatsoever.

Field Marshal v. Blomberg, whose testimony has been submitted to the Tribunal by the prosecution, defines the position of the defendant Keitel as Chef du Bureau (Office Chief). This definition is materially correct. A Chef du Bureau has to take care that the bureau which he directs operates orderly, that the affairs are correctly and promptly settled by the competent officials. But he does not participate in the final decisions considered by his superior, here the Supreme Commander of the Wehrmacht, as being correct. While this principle holds already true in general, it is especially true here. It is known that Hitler did not accept any advice concerning military decisions. This has been proven through the hearing of evidence, particularly through the testimony of General Jodl.

7. The defendant Keitel has clearly outlined in the Affidavit K No 8 the activities of the OKW as "Coordination in the state and in the Wehrmacht". The affidavit gives an idea of the difficult and unthankful work of the defendant Keitel.

It consisted mainly of a coordination of the desires and needs of the Wehrmacht branches. It consisted furthermore of the settlement of arising divergencies and of a struggle against Hitler's negative attitude towards any orderly settlement, i.e. through the competent channels.

In any branch of the armed forces there are interests which differ from the interests of other branches and which cannot be entirely satisfied; sometimes they even oppose each other. This is true especially for the replacement of personnel but also for the supply of everything that is required for special warfare.

The point of intersection of all these factual and personal differences of opinion was the OKW.

If one desires to rate at its true value the incontestable fact that the defendant Keitel was shown hostility, and was personally judged unfavorably by nearly all sides, one must note that this fact occurred as a necessary result of the overlapping of factual interests and personal differences of opinion which Keitel tried to settle by means of coordination or mediation, i.e. in nearly all cases by means of mutual compromising. No particular personal experience is needed in order to know that the objective mediator will always incur the ingratitude of both parties.

The same picture becomes evident in the relationship to the numerous offices which were provided with special official authorities or which had Hitler's favor and special confidence for personal, mostly party-political reasons.

One must realize these differences and overlapping interests to appreciate the heavy burden of work involved in Keitel's position.

The realization of the special relationship between the leadership of the Armed Forces and the political sector is the more difficult as the functions of the High Command of the Armed Forces, of the Reich Minister of War and of the Chief of State were embodied in the person of Hitler, since February 4th, 1938.

Therefore, since February 4th, 1938, complete accord existed between the political leadership and the leadership of the Armed Forces due to the identity of the person.

The assumption suggests itself—and the Prosecution made it—that the chief of Hitler's military staff was so closely connected with its superior, Hitler, that he must be responsible for the political complexity, if not as the perpetrator, then in some form as provided in Article 6 of the Charter. This assumption is erroneous.

In this connection there is no need to enter into the hierarchy of the Fuehrerstate and the compelling character of a military order (compare Prof. Jahrreiss' presentation). The military hierarchy is older than the National Socialist ideology; at any rate, it must be said—and considered on your part—that the introduction of the absolute Fuehrer principle into the Wehrmacht signified the final elimination of all endeavors which in a sense could be considered as democratic, or in any event as curbing dictatorial designs. In this connection I wish to refer to Keitel's affidavit, Document Book II No. K9 "OKW and General Staff". The rigid enforcement of the Fuehrer principle—judged in retrospect gradually sharpened the sound military obedience principle to an exaggerated militarism. This found expression among others in the prohibition of any criticism from the lowest to the highest levels (Hitler's speech at the Kroll Opera House 1936 or 1937), in the abolition of endorsements expressing divergent opinions 1938 (Aufhebung des abweichenden Aktenvermerkes) (statement by General Winter), in the prohibition of requests by Generals to resign, and finally, in the elimination of the Commander-in-chief of the Armed Forces and of the Minister of War. It cannot and should not be denied here that the defendant Keitel was an absolute follower of the Fuehrer principle in the Wehrmacht leadership, and that the study "Basic Considerations Regarding the Organization of the German Wehrmacht", document L–52, may be looked upon as his confession concerning the leadership in a future war, however, without a concrete war having been foreseen at that time or having prompted the writing of this study.

What does this mean for the defendant Keitel?

Whoever recognizes the Fuehrer principle as militarily correct, must act accordingly. Professor Jahrreiss demonstrated that the Fuehrer principle—like another political system—is not absolutely good or bad, but that everything depends on the ways and means of carrying out the principle and on the methods of realization. Keitel has a military background and favors the Fuehrer principle for the field he knows. According to this principle the responsibility lies positively with the one who has the authority to command. While the Fuehrer principle in fact hardly underwent any change in the civilian province, where it was also applied but where it amounted to no more than superficialities, this principle necessarily made itself felt much more strongly and obviously in the military sphere, particularly in the relationship between the Commander-in-chiefs and their Chiefs of the General Staff.

Formerly the Chiefs of the General Staff had been the materially responsible Commanders, now they became the operational assistants to the Commanders. In the formulation of orders they were "collaborators", advisers in the field of strategic operations, for which these officers had been especially trained.

Keitel was—that is certain—neither a Commander nor Chief of the General Staff, he was the Chief of the Military Office (Militaerkanzlei) under Hitler, soldier and administrator of war ministerial duties; therefore minister, claims the Prosecution.

One should not refer in this trial to distinctions which turn out to be formalistic when the real functions give another picture. This is particularly important in the case of Keitel. It should be determined what he actually was and how he acted in reality.

The dual position created by the decree of February 4, 1938, leads to an erroneous understanding of Keitel's functions. To begin with Hitler dissolved the Reich Ministry of War because he no longer wished to have a Minister of War; in spite of the fact that on the 4th of February 1938 a considerable number of functions, handled up to then by the Reich Ministry of War, had been assigned to the individual Wehrmacht branches, the OKW retained a number of functions and their administration.

To do justice to the intended strict concentration of functions pertaining to the war leadership, Keitel was not at liberty to attend to these on the basis of his complete authority according to his own judgment, but he had to present the demands of the Wehrmacht and coordinate the Wehrmacht's affairs with the duties of the other ministries.

It cannot and will not be denied that this concentration of duties in the person of Hitler was in practice unfeasible. Thus, an extensive amount of preparatory and executive work rested with Hitler's military staff, (Arbeitsstab) whose Chief of Staff was Keitel. Hence also, the responsibility. But not with reference to important questions, especially those of a fundamental nature. It was, of course, a matter of judgment to what extent the defendant Keitel considered matters essential and fundamental and submitted them. But the evidence showed that when in doubt, Keitel was inclined to present matters rather than to make his own decision, after he had examined them conscientiously.

The sources from which Hitler got his news were so intricate that Keitel had no way of knowing whether Hitler got the news that seemed important to him through his adjutants, through Himmler and Bormann or in some other way. To avoid afterwards the unavoidable discussions with Hitler who, being distrustful of everyone, always took it for granted that people would intentionally conceal things from him, Keitel was anxious not to leave himself open to reproaches for having omitted something. A characteristic example is the case of the mass escape of 80 RAF officers from Camp Sagan.

In this connection the point is simply to state that Keitel in his capacity as custodian of the functions of the ministry of war which still remained in the OKW, held no position as a Minister. Here, too, he was the chef du bureau, the head of the military office, a position which is also held by the chief of a ministerial office, or even a state secretary. I wish to refer in this connection to Dr. Lammers' statement, already referred to by me (page 5358 of the German transcript), and to the affidavits of Grand Admirals Raeder and Doenitz which I have already mentioned here repeatedly.

The text of the Fuehrer decree of February 4, 1938 shows that Hitler wished to make this clear (1915–PS). If Hitler had not had the desire to exclude every third person from a responsible and perhaps to him uncomfortable function at the highest military sector, he might have given Keitel at least the authority to take part in Cabinet meetings. In the Fuehrer decree (2098–PS), in which the Commanders-in-Chief of the Army and Navy as well as Keitel had been given the "rank" of a Reichs Minister, it was explicitly stated that both Commanders-in-Chief shall be entitled to take part in Cabinet meetings. The fact that this was decreed simultaneously is a convincing argumentum e contrario. It proves that Hitler did not wish that his Chief of Staff of the OKW may perhaps have the opportunity to present his own opinions and possible doubts before the Cabinet.

That Hitler gave the defendant Keitel the "rank" of a Reich Minister had the purpose of enabling him to carry on direct negotiation with the departmental ministers (Ressortministern). Had Keitel not have had the rank of a Reich minister, he would have been limited to conferences with state secretaries and such, thus very handicapped in carrying out the Fuehrer's orders and tasks.

It is erroneous, therefore, that the Prosecution termed Keitel as Reich minister, even as Reich minister "without portfolio". He was no minister, and was no member of the Reich government. State Secretary Stuckart in a document submitted to the

Prosecution has listed all members of the Reichsregierung. Keitel is not among them; he is mentioned in this document only as the holder of one of the highest offices.

Now, the Prosecution has not limited the term Reichsregierung to membership in the Reichscabinet, but considered other branches as part of the Reichsregierung, too. It would seem, therefore, as if the Prosecution looked upon the legal structure based on German Law as irrelevant. Pursuant to appendix B to the general Bill of Indictment the Reichsregierung is according to the indictment composed of:

1. Members of the regular Cabinet after the 30 January 1933, the day Hitler became Chancellor of the German Republic. The expression "regular Cabinet" used here means: Reich Minister, i.e., Head of Departments of the Central Government; Reich Minister without portfolio, Minister of State with the function of Reich Ministers and other officials entitled to participate in the Cabinet meetings.

[The Tribunal objected to the length of Dr. Nelte's speech on Keitel's position.—Ed.]

Through the hearing of evidence (testimonies by the witnesses Reich Marshal Goering, Dr. Lammers, von Neurath, Keitel, Raeder, Doenitz) it was proved that despite the Fuehrer decree of 4 February 1938 (Document 1915–PS) there never was a Secret Cabinet Council, that such council was never set up, that it never held a session and no persons involved ever received a commission. Thus, it is proved that the defendant was never a member of the Secret Cabinet Council.

It is true that Keitel was a member of the Ministerial Council for the Defense of the Reich. Witness Dr. Lammers has confirmed that becoming a member of the Ministerial Council for the Defense of the Reich did not change Keitel's official position, and especially did not make him a minister. In his affidavit of 25 November 1945, the co-defendant Dr. Frick says that Keitel worked in the Ministerial Council for the Defense of the Reich as "liaison man".

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

In order to clarify the defendant Keitel's responsibility and competence it is necessary to analyze the concept of OKW. I ask that this statement be not considered a theoretical and, therefore, superfluous discussion.

[At this point, Defense Counsel voluntarily omitted material that he would furnish in writing to Tribunal.—Ed.]

In order to see clearly what part Keitel played in reality and what share he had in the happenings, as a whole after investigating his legal competencies, I now wish to examine what actual influence he had upon the development and carrying out of the measures the effects of which constitute the subject of this trial. And from everyday experience we know that it does not matter so much what a person should be in a particular position, but what he has made of that position by virtue of his personality.

I believe I may say that in the course of this trial the personality of no other defendant has been judged in such varying and contradictory ways as that of the defendant Keitel.

Keitel's material responsibility is proportionate to his actual position in the tug-of-war with and around Hitler, his effective influence upon that group, and with it on those circumstances as a whole which could prove the cause of the effects of Hitler's Headquarters in the military field.

I shall deal with this fundamental complex when taking up the charges made by the prosecution against Keitel, on the strength of the cross-examination of Dr. Gisevius, in other words after presentation of evidence has been completed.

In view of the comprehensive scope of Justice Jackson's questions and the answers given thereto by Dr. Gisevius, the testimony of Dr. Gisevius has become of tremendous importance in the case of the defendant Keitel.

Were Dr. Gisevius' statements about Keitel true, i.e. statements made by him in most instances in terms of conclusive findings, derived from information, the defendant Keitel would not have told the truth during the presentation of evidence. The importance of that fact becomes evident when it is considered that a negative opinion on truthfulness would of necessity destroy Keitel's defense, which in its essence draws on the subjective aspect of facts, as a whole. In view of this fact and the importance of the testimony of Dr. Gisevius also for other defendants, it becomes my duty not to leave anything undone to explain the contrast between Keitel's answers and the testimony of the witness Gisevius.

Experience has taught that dead witnesses are the best witnesses because the rendering of their purported utterances cannot be directly refuted. Testifying on the strength of information belongs to another group of statements which almost defy refutation.

The testimony of Gisevius combines both possibilities in that he bases his testimony primarily on information obtained from witnesses who are dead. It seems to me that Justice Jackson uses Dr. Gisevius as star-witness in his global attack on the defendant Keitel. After completion of presentation of evidence against Keitel he did not bring forward one individual circumstance but an indictment on all counts. * * *.

The counter-presentation of evidence is concerned, on the one hand and as far as possible, with proving the objective incorrectness of facts based upon information obtained from certain individuals, and, further, with establishing proof of the unreliability of the information. I call to mind the words which the defendant Keitel said under oath upon completion of his direct examination by me while in the witness box:

"One may hold it against me that I was wrong and made mistakes, that my attitude toward the Fuehrer Adolf Hitler was wrong and weak, but it should not be said of me that I was a coward, that I was untruthful and that I was disloyal".

I repeat in condensed form the charges made against the defendant Keitel, during interrogation by the Prosecution (proceedings of 26 April 1946, pages 8378 to 8385), as follows:

1. Keitel built an inpenetrable ring round Hitler so that the latter could be told nothing.

2. Keitel failed to pass on to Hitler reports he had received from Canaris whenever such reports covered atrocities, crimes and the like, or he gave orders to modify them.

3. Keitel had a tremendous influence on the OKW and the army.

4. Keitel threatened his subordinates, when they made political statements that he would not protect them, he even said that he would turn them over to the Gestapo.

1. Dr. Gisevius says in one part of his statement that Keitel had no influence over Hitler. He exonerates Hitler by explaining that Keitel had formed a ring round Hitler, in order that the latter should be told nothing.

The English and American prosecution, in their indictment, called Keitel a powerful staff officer, who had exerted great influence over Hitler; the French prosecution described Keitel as a willing tool of Hitler; the German generals called him a yesman who could not carry anything through, and now Keitel grows, according to the statement of Dr. Gisevius, into a real handy-man and buffer of Hitler, who hid from the latter anything bad, who submitted to him only what he (Keitel) saw fit, and permitted no one to approach Hitler.

a. The prevention of access to Hitler by Keitel, as asserted, can only be maintained by somebody who did not know the conditions prevailing around Hitler. Before the war Keitel worked in Berlin in the Bendler Strasse, while Hitler was in the Wilhelmstrasse (Reich Chancellery). Keitel came perhaps once a week to report, or on special order. At that time, on account of space conditions it was in fact impossible for Keitel to exert any influence over access to the Fuehrer.

b. It was equally impossible, when Hitler was at the Berghof near Berchtesgaden for weeks at a time whilst Keitel remained in Berlin.

c. At the beginning of operations, Keitel was with Jodl and the Supreme General Staff (W.F.St.) at the Fuehrer's Headquarters (FHQu). Here also they were separated. Keitel did not sit in Hitler's anteroom, but rather in other buildings or barracks. He came at the proper time with General Jodl to the conference on the situation, in which, besides Hitler, some 15 or 20 officers of all three branches of the Wehrmacht took part, apart from the conferences on the situation there was no physical contact. When Hitler wanted Keitel for anything he sent for him.

d. Personally and physically there was closer contact in Berlin between Hitler and his adjutants, the chief of the Party Chancellery, the chief of the Presidential Chancellery and the chief of the Reich Chancellery. Keitel not only could not decide who could see Hitler, he also could not possibly prevent anybody going to Hitler.

e. Hitler's sources of information were the responsible heads of each department; it was occasionally not clear whence Hitler obtained his information.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

Gisevius did not know these conditions from his own experience; he never was himself near Keitel, who never saw or spoke to him, and whose name he did not know. If he gave his opinion here, he could only base it on information given him by Canaris, Thomas and Oster.

General Jodl has been heard regarding this question. He certainly is the best witness in this matter, since he, as well as Keitel, lived in the immediate vicinity of Hitler and therefore could form his own judgment. He stated concerning this matter:

"Unfortunately, it was impossible to keep things from Hitler. Many channels of information led to Hitler direct."

Upon my interrogation, at the suggestion of the Tribunal, Jodl confirmed that what Keitel deposed was quite correct, and that which witness Gisevius stated was in general, merely a figure of speech.

The co-defendants, Grand Admirals Raeder and Doenitz, have confirmed that the assertion of witness Gisevius that Keitel was able to keep the high commanders of the branches of the Wehrmacht away from Hitler is false. If, however, this was not the case, it follows that the way from the branches of the Wehrmacht to the Fuehrer was open at any time.

Through the hearing of witnesses it was also established that apart from Jodl, the Chief of the Supreme General Staff, and also in particular Canaris, had immediate access to Hitler.

Thus the accusation of witness Gisevius, that Keitel had formed a ring round Hitler is proved false.

2. The treatment of the statements.

The witness Gisevius has declared that reports were submitted to Keitel by Canaris about atrocities in connection with deportations, extermination of Jews, concentration camps, the persecution of the church and the killing of insane persons, which Keitel withheld from Hitler.

The same is alleged about the reports of General Thomas, Chief of the Defense Economy office, the purpose of which was to inform Hitler about the war potential of the enemy and bring him to reason. Concerning Admiral Canaris' reports, it must be said, that as chief of espionage and counter intelligence he naturally delivered regular reports which concerned the conduct of the war including the conduct of economic warfare.

It is affirmed here that reports were submitted on subjects which belonged neither to the jurisdiction of the Counter Intelligence Office nor of the Army High Command (OKW). It has been proved, that Hitler took strict care that every worker confined himself to his own special field and it was particularly forbidden to military offices to concern themselves with political affairs.

Keitel has declared under oath that he knew nothing about the atrocities and especially about the extermination of the Jews, and the concentration camps. This is in absolute contradiction to the assertion of the witness Gisevius that Canaris submitted reports to the defendant Keitel on the above mentioned subjects. One can affirm that reports of any kind whatsoever were delivered to Keitel without having to fear being contradicted, especially when one does not have to fear that these reports will be found. For if they are not delivered, neither can they be found, because they do not exist. Now Gisevius has declared that he gathered documents from the beginning which contained incriminating material. Is it not remarkable, under these circumstances, that up to now, none of these reports have been produced. If they were on hand at the Army High Command (OKW) they were to that extent an object of the accusation and the evidence. Can it be sufficient under these circumstances if a witness declares he knows from third parties that such reports were submitted to Keitel?

Canaris, because of his particular situation, which sent him constantly to foreign countries on personal, secret errands for Hitler, had access to Hitler at all times. He would thus have had an opportunity to go to Hitler immediately if he had had serious misgivings of conscience, as Gisevius has declared he did. Why did he not do so?

Now Gisevius who in general has pronounced global and damning accusations, has luckily for Keitel, at one point of his deposition made a positive declaration that permits of objective verification. (Page 8379/80 of the German transcript):

* * * I believe that I have still two examples to mention, which to me are particularly characteristic: First, the attempt was made by all possible means to induce Field Marshal Keitel to warn Hitler against the invasion of Holland and Belgium, that is, to inform Hitler that the information submitted by Keitel about alleged violations of neutrality by the Dutch and Belgians was false. The Counter Intelligence Office (Abwehr) was to prepare reports incriminating the Dutch and Belgians. Admiral Canaris at that time refused to sign these reports. I request that this be verified. He told Keitel repeatedly that this report which was ostensibly made by the Army High Command (OKW) was false. This is an instance where Mr. Keitel did not transmit to Hitler what he was supposed to have transmitted * * *."

I have submitted to Colonel General Jodl, here, on the witness stand Document 790-PS which refers to the case of the White Book about violations of neutrality by Holland and Belgium. Jodl testified, word for word:

[Page 10942/43 of the German minutes]

"* * * I understand the question and would like very briefly to state the fact, as it really was, so long as disgust does not choke me. I was present when Canaris came to the Field Marshal in the Reichs Chancellery with these report notes and laid before him the project of the Foreign Office's White Book. Field Marshal Keitel then looked through this book, above all listening to the chief remarks which Canaris made at the request of the Foreign Office, namely, that the reports were perhaps still susceptible of some improvement, that he should confirm the fact that a military operation against Holland and Belgium was absolutely necessary, and that as it is expressed here, a final really striking violation of neutrality was still lacking. Before Canaris had said a word, Field Marshal Keitel threw the book on the table and said; 'I refuse to do this, how does it happen that I should take any responsibility for a political decision. In this White Book appear word for word, true and correct, the very same reports that you, yourself, Canaris, brought to me.' To this Canaris said: 'I am entirely of the same idea. It is, in my opinion too, entirely superfluous to have this document signed on the part of the Wehrmacht and the reports that we have here, are in their totality completely sufficient to prove the violations of neutrality which have taken place in Holland and Belgium.' And he advised Field Marshal Keitel not to sign it at all. That is the way it happened. The Field Marshal then took the book with him and I do not know what happened subsequently * * *." Keitel did not sign the White Book. Therefore in the only verifiable case a clear proof is obtained of the inexactitude of Gisevius' testimony.

3. According to the statement of the witness Gisevius, Keitel exerted a tremendous influence on the Army High Command (OKW) and the Army. These words, without any presentation of concrete facts are only a phrase in the mouth of a man who had no contact whatsoever with Keitel. They are refuted by the statements of Goering, Doenitz and Raeder. Jodl has qualified this statement as merely a figure of speech. Insofar as the witness speaks of his tremendous influence on the OKW, it must appear questionable what the witness really means.

Naturally, Keitel as Chief of Staff had influence in the Army High Command, that the influence which resulted from his position which I have already discussed. How he stood with his subordinates will be taken up later.

The important thing, however, is to know whether Keitel had a decisive and culpable influence on what happened. This influence, however, could only take effect on Hitler or the branches of the German Armed Forces. That Keitel had no decisive influence on Hitler has even been confirmed by Gisevius and his being without decisive influence on the branches of the Armed Forces, has been established by the results of the testimony.

4. An especially damaging reproach against the defendant Keitel was "that instead of placing himself in front of his subordinate officers to protect them, he threatened to hand them over to the Gestapo".

In contradiction to this, it has been established that no Chief of Office in the Army High Command was dismissed in the years up to 1944; furthermore, until 20 July 1944, the day of the attempt on Hitler's life and the transfer of the judicial power in the home-army to Himmler, no officer of the Army High Command was turned over to the Police. Grand Admiral Doenitz has confirmed that the branches of the Armed Forces and the Army High Command were very scrupulous in maintaining the privileges of the Armed Forces as opposed to the police.

The Court has also seen here, how General Jodl spoke about his relation to the defendant Keitel. I think this remark has a special importance. Not only because Keitel lived on companionable and friendly terms with his official subordinate, General Jodl, during their long years of cooperation. As natural as that may appear, the less natural it is, if one reflects that Jodl in spite of his officially subordinate position, in reality became more and more Hitler's only strategic adviser. What this means, considering the preponderance of the operational tasks in the war, has been convincingly demonstrated here by General Jodl.

If Keitel took this without jealousy, freely acknowledging the superiority of his subaltern Jodl in this domain, this proves in Keitel a trait of character which refutes the information derived from obscure sources by the witness Gisevius.

The proven fact that Keitel lived on friendly and companiable terms with his subordinate Chief of Office, Canaris, also is incompatible with the contrary assertion of witness Gisevius.

In this connection it is necessary to refer to the fact not submitted by Keitel but testified to by Jodl without Keitel's consent, that the latter supported and helped Canaris' family after his arrest. I only refer to this to refute the perhaps most serious personal reproach, according to which Keitel did not behave decently towards his subordinates and abused his superior position—which was especially powerful in military life—even to the point of threatening violence.

According to Gisevius' evidence, Admiral Canaris not only played a double role in the service, but also with respect to the defendant Keitel, while exploiting the friendship shown to him, he expressed a similar attitude, whereas in the midst of his own group he openly spoke in a spiteful way about Keitel.

Finally in this connection reference must still be made to the evidence of the witnesses v. Buttlar and Brandenfels (session of 8 May 1946, page 11119 of the German transcript), from which it is clear that Keitel always treated the officers of the German Armed Forces Operational Staff kindly.

The witness mentions a quarrel between himself, Lieutenant-Colonel v. Ziervogel on the one hand and Himmler on the other, in which Keitel, to whom the incident was reported, immediately and energetically intervened in writings to protect his subordinates against Himmler. The affidavit of the Chief of Office in Canaris' office, Admiral Buerkner, to which I refer also testifies in the same way to Keitel's kindly attitude towards his subordinates.

At any rate, it must be said in clarification that Keitel many times had occasion to speak energetically to his office and department chiefs.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

I shall then continue by explaining that officers and officials did not generally concern themselves with politics, and that when the situation deteriorated, they made political information the subject of their argumentation. And in explanation I state that Keitel has, in fact, defined his attitude with words which were based on his assumption that the soldier in war would have to testify to his faith and obedience, and that if Keitel ever heard anything, he would reprimand these officers.

Keitel did this with "words". That does not mean that this was mere camouflage which did not correspond to his inner attitude; but it does mean, that the form, perhaps often rough and harsh, in which the defendant Keitel spoke to his officers did not —even in a single case—lead to an officer being punished or disciplined. Dr. Gisevius, however, perhaps wanted to say that Keitel, had dealt with his subordinates in the Army High Command in a morally reprehensible way.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

From an impartial estimation of the facts verified by the presentation of evidence it is shown that the accusations arising from the testimony of the witness Gisevius are not correct.

But the picture would not be complete if the personality of the witness Gisevius would not be illuminated according to his own evidence. This judgment is made from two factors:

1. The career and the position of the witness.
2. The trustworthiness of his information.

To 1.

a. He evaded the military service through falsified papers put at his disposal by Oster.

b. He lived in Germany during the whole time since 1933 without restriction of liberty and remained in office up to 20 July 1944.

c. He was an official of the German Reich and was in its pay from the middle 1937 to the beginning of 1939 with the exception of leave.

d. He was Vice-Consul of the Reich in Switzerland since 1943 in the Consulate General at Zurich placed through Canaris as intelligence agent and was naturally paid for it. At the same time he was in connection with the enemy's intelligence service.

e. He had since 1933, when he worked in the Gestapo, the exact knowledge of all horrible happenings and the perception what consequences could arise from it for the German people.

f. A special circumstance, which shows the witness Dr. Gisevius in his true light, is the advice or the suggestion which he gave to the experienced bank specialist Dr. Schacht: He should allow the inflation and thus get the control of affairs into his own hands. This suggestion leaves only two possibilities: A complete ignorance of the national economical importance and social effect of an inflation or a boundless unscrupulousness which completely disregards the fate of the employees and workmen who are specially threatened by the inflation. An inflation brought about knowingly can be described only as a crime against the people. Schacht described it as a catastrophe. It is characteristic that Dr. Gisevius proposed such a catastrophe without any restraint, in order to achieve a goal for which he was not prepared to risk his life for an instant.

To 2.

In order to judge the reliability of the statements by the witness Gisevius before this tribunal, I must refer to the book submitted by the witness as evidence: "To the Bitter End". This book is also a "statement" of the witness Gisevius.

To err is human, but when in the year 1945—after the collapse of Germany—a book appears in which facts and occurrences are communicated of historical and for those personally involved of moral and even criminal importance, the incorrectness of which has become obvious in the meantime, then the mistake is unforgiveable and there is no longer an excuse for referring to false informations.

I will refer only slightly to the many inaccuracies contained in this book which were established before this Tribunal through the cross-examination by Dr. Kubuschok: (page 8413 of the German transcript 26 April 1946)

1. Dr. Gisevius has asserted in his book that von Papen has not resigned notwithstanding the events of 30 June 1934. It is established that von Papen has resigned and that the public announcement was simply contemplated to be made at a later date.

2. Dr. Gisevius asserted further that von Papen took part in the Cabinet Meeting which he describes with exacts details and when the law was resolved that the measures taken on 30 June 1934 were correct in the interest of the state.

Actually von Papen has never taken part in this Meeting.

3. Dr. Gisevius asserted finally that von Papen travelled to

Hindenburg, but had not raised a sufficient protest against the measures. Actually it was that the attempts of von Papen to visit Hindenburg were frustrated, therefore he could not visit him.

4. Also the assertion in the book of Dr. Gisevius that von Papen took part in the Meeting of the Reichstag, in which the measures of 30 June were approved, must be admitted as incorrect information.

One would not define it as an unfounded reproach if such a statement is described dubious and the author not reliable.

It is difficult for me as a German defense counsel to deal calmly with this problem. The statement of Gisevius contains the entire tragedy of the German people, it is for me a proof of the weakness and of the decadence of the German circles who played with the idea of revolt and high treason, without apprehending intimately the distress of the people. They were a top level of the future ministers and generals without support from the large masses of our people, working classes, as Reich Minister Severing has declared here with all clearness.

Mr. Justice Jackson has used the word "resistance movement" in connection with the examination of the witness Gisevius. We have often heard during the progress of this trial about unfrightened, brave men and women, who fought for their country, have suffered and died. They were our enemies. But nobody would deny the acknowledgment of their heroism, who tried to judge these things objectively. But where will you find this heroism in the group around Gisevius?

If one reads his book "To the Bitter End" and one has heard him here, one looks in vain for a self-sacrificing man. Even the late deed of a Stauffenberg lacks heroism, as it lacked the decision of the self-sacrifice. Gisevius speaks in the time up to 1938—as if there was time—to hold back the wheel of the fate successfully, always about negotiations, conferences, but all these men wish that the others—that is the generals—should negotiate. If one considers the knowledge of affairs, which Gisevius had as member of the Gestapo and all his friends, if one takes into account the perception of the great danger in which the people were suspended, then the decision for action should not be doubtful for an instant for the patriotic men, as the members of the group claimed themselves to be. But what did they do? As the leaders of the army hesitated or refused, they did not think about their own action, but turned to the foreign countries.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

I should not like to leave any doubt that the fact of the conspiracy in itself is of no importance in the question of trustworthiness to be discussed here. Wherever is a conspirator out of pure motives, who, in the realization of the danger which threatens his country, risks his life, is not only clean, but also deserves the gratitude of the fatherland.

If Gisevius and his friends, who, in their positions were informed about everything which, in its entire frightfulness, most Germans have only learned through this trial, had served their country in unselfish sacrifice, then perhaps we and the world would have been spared much distress and suffering.

Grand Admiral Doenitz, who knew Admiral Canaris well, said: "During the time that he was in the Navy, Admiral Canaris was an officer in whom little trust was placed. He was an altogether different person from us. We said that he had seven souls in his breast". (Transcript page 9201) Dr. Gisevius himself said of Canaris, "The successor was Canaris at that time captain in the Navy quite clever and more cunning than Himmler and Heydrich together." (Page 319 of the book "To the Bitter End" which was presented in the Schacht case as documentary evidence).

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

Reference to Canaris, I only want to say that he was living in the closest touch with Himmler, Heydrich and the Gestapo although he was their sworn enemy as he admitted. Thomas, who had been a member of the Gestapo, was an excellent General staff officer, and he was an untiring worker in the Army Command Staff under Keitel. Reference is also made to that in document 2353–PS. That man was the spirit and the driving power of rearmament which he, Keitel, and others considered necessary to the extent which he energetically pursued. But it is the same man who worked on the Barbarossa Plan and who later, under the Four Year Plan became the head of the economic staff of the Plan Oldenburg. The results of that plan need not be explained here by me. General Thomas who, according to his very convincing exterior appearances used all his powers for the economic situation of the war, and who after leaving Speer was by no means dismissed but was given the task of writing the book which is the main evidence of the Prosecution. (2353–PS)

If it is true that what Gisevius has said about Thomas that he, in 1933, had played a double game, then he was an opportunist and not a man who can be expected to give objective information.

According to the statements by Dr. Gisevius, Nebe had been his friend since 1933 and was thoroughly familiar with the trend of thought of the witness. He remained in RSHA—discussed numerous times here—until 20 July 1944, and in the year 1944 he had power to issue orders to headquarters of the Special Service Office (Sonderdienst) in charge of prevention of escape of prisoners of war. This is shown by enclosure to document USSR 413, submitted by the prosecution, testimony of the witness Wielen also heard here.

To characterize this witness—from whom Dr. Gisevius after leaving the Gestapo claims to have received information currently—it should be pointed out that from 1933 to July, 1944, Nebe served in RSHA, evidently to the satisfaction of his superiors Himmler, Heydrich and Kaltenbrunner; otherwise he would not have stayed in office that long and would not have been promoted to the rank of Police General and SS Gruppenfuehrer (SS Major General). While thus, on the one hand he fulfilled the tasks incumbent upon him by reason of his position, for 11 years, with the well known methods of the Gestapo and later the Kripo (criminal police) which were under Himmler, Dr. Gisevius refers to him as his friend and political associate. Now, it might be assumed, perhaps, that in the position he held he was able to prevent disaster, possibly even to hold up execution of orders. Document USSR 413, just referred to, shows that this is not what Nebe did; rather did he work as a loyal Himmler police general. In the deposition by Wielen—forming part of the document—the horrible case of the 50 escaped RAF fliers in which case General Nebe and Dr. Gisevius were involved is dealt with.

On this Wielen states the following:

"One day during that time I received an order around noontime, by telegraph, from General Nebe to proceed to Berlin immediately, to become acquainted with a confidential order. Arriving in Berlin on the evening of that day, I reported to General Nebe at his office, Wendischer Markt 5 to 7. I gave him a condensed report on the status of the matter at that time. He then showed me a teletype order, signed by Kaltenbrunner, to the effect that, in conformity with the Fuehrer's explicit and personal order, more than half of the officers who escaped from Sagan were to be shot when recaptured. * * * I said this violates martial law and undoubtedly was bound to result in retaliatory measures against those of our own officers who were in English camps, as prisoners of war, and that I simply refuse to take any responsibility. General Nebe declared that in this instance I am not at all responsible, since the state police was to act entirely on its own and that, after all, orders given by the Fuehrer had to be executed without protest. Nebe added furthermore that, naturally, it was my duty to keep the matter in deepest secrecy and that the reason for his showing me the original order was so that I would make no trouble for the state police."

Any comment seems superfluous. This is significant for Nebe's personality. The trustworthiness of a person is an inseparable part of his entire personality. Information obtained from a person who, for more than a decade, was able to play such an abominable double role can have no claim to faith.

I believe that this analysis of the statements of the witness Dr. Gisevius and of the men belonging to the Gisevius group gives me the right to say that the charges made against the defendant Keitel by the witness can be no suitable foundation for the argument of the prosecution, that the defendant Keitel:

1. Formed a circle around Hitler,

2. His influence on the OKW and the armed forces was tremendous.

3. He did not submit reports on atrocities and crimes to Hitler.

4. That he did not protect his subordinates, even threatened them with the Gestapo.

On the other hand it is true that the effective position of Keitel, however, important it may have seemed to outsiders, was neither decisive nor of determinating importance, whether for the total sum of event or also for the basic and important decisions of Hitler. Justice can be done to the actual importance of this activity if one says that it was tremendous, because physically and spiritually it went beyond human strength; because it placed the defendant permanently in a dilemma between his military point of view and the unbending will of Hitler, to whom he was faithfully, far too faithfully devoted. Physically, because it was nearly insoluble, because it had no sharply defined, clear outlines, but consisted in the eternal equalizing of factual differences, the adjustment of personal sensitiveness, the "self-protection" against encroachments of the individual offices among themselves or against the OKW (questions of competence); in clever manoeuvering when Hitler, in explosive reaction to disagreeable news, wished to issue extravagant orders, in the settlement of all disagreeable matters which Hitler did not wish to attend to himself. (For instance refusal to listen to complaints which had reached him directly through the adjutant's office, meeting out of reprimands, dismissals from service, etc.) It was a tremendously thankless task, which found only very slight compensation in the brilliant situation in the immediate proximity to the head of the State, in the decorative participation in all events of what is called world history, in the representative duties of a Field Marshal.

Keitel, a political General?

The defendant Keitel is accused of having taken part in, helping and promoting the planning, preparing of and inciting to aggressive wars with violations of international treaties and agreements. The defendant stated in the witness box in this connection: In so far as knowledge or having cognizance of the intention to attack is concerned, I shall come back to the subject in connection with other things. The facts as such are set forth by the defendant Keitel.

In so far as the initiating and carrying out of strategic measures are concerned, the defense counsel for General Jodl will deal with these questions.

I would like to mention here a single event which gained historical and for the defendant Keitel a personal importance during this trial: the conversation between Hitler and von Schuschnigg on the Obersalzberg on February 12th, 1938. This was the sheet-lightning that could have revealed the coming of the storm to clear-sighted peoples. Keitel, chief of the German High Command for only a week, so far without any contact with high political events, did not perceive these signs of approaching stormy weather. Hitler, who after the sudden change of 4 February 1938 had immediately gone to the Obersalzberg, called Keitel for the first time, without giving any explanation. Keitel came, without knowing what Hitler wanted or what was to happen in Obersalzberg. Only in the course of the day did he realize that his presence could have any connection with the presence of Schuschnigg and the discussion of the Austrian evidence proved, in any of the conversations, especially with Schuschnigg or Dr. Schmidt. He however realized that his presence, together with that of generals von Reichenau and Sperrle should have a significance for the conversations with Schuschnigg; for, since Hitler did not speak to him at all about military matters, he was forced to the conclusion that the representatives of the Supreme Command of the Wehrmacht, the Army and the Air Force had been invited to demonstrate the power of the Wehrmacht in Schuschnigg's eyes.

The situation was therefore such that Hitler had the intention of using the representatives of the Wehrmacht as a means of pressure for the realization of his political plans, that they had no knowledge of this beforehand, and that they realized this intention only later on.

This meeting at the Obersalzberg is now being used by the prosecution as a basis for the accusation that Keitel was a political general. The prosecution introduced the conversations between

Hitler and Hacha and Tiso, at which the defendant Keitel also was present as a further symptomatic event. This evidence does not appear convincing, if it is intended to prove that Keitel was also an active party in the political conversations.

When the defendant Keitel took part in State visits and conversations with foreign statesmen, he did not participate in the conversations, but he was present. Hitler liked to have Keitel in his entourage as representative of the Wehrmacht. Thus Keitel was also present at Godesberg when Prime Minister Chamberlain went there, also at Munich on September 30th 1938 and at the visit of Molotov in November 1940. He was also present at the meetings of Hitler with Marshall Petain, with General Franco, King Boris, with Regent von Horthy and with Mussolini.

This function of Keitel is however insufficient to make the defendant into a General who would have taken a determinative part in the political evolution. How little this assertion is justified is seen from the fact testified to by admiral Buerckner, that Keitel was extremely careful not to intrude himself into the affairs of the Foreign Office and gave his officers the order not to engage in matters of foreign policy (e.g. the military attaches).

In internal politics the exclusion of the chief of the OKW resulted from the removal of the Reich Minister for War, already dealt with, and the elimination thereby aimed at and achieved of the political representation of the Wehrmacht in the Cabinet.

It is self-evident, and has already been pointed out, that the position of the defendant Keitel as Chief of the OKW implied and in time of war must have implied to an increased extent his coming into some kind of contract of with all the Ministries and highest Offices, and his dealing with them as the representative of the OKW, that is to say of Hitler.

That did not make Keitel a politician, i.e. a man who took part in an advisory capacity in the determination of Governmental aims and had an influence on the same.

In his high office he naturally worked to carry out these aims and thus far bears a responsibility, but not as a political General.

1. The idea of war against Russia was rejected by Keitel. This found visible expression in the memorandum which Field Marshal Keitel drew up, discussed with von Ribbentrop, and handed over to Hitler. According to his sworn statements the reasons were as follows:

a. military considerations,

b. the non-aggression pact with the Soviet Union, dated 23 August 1939.

In spite of personal presentation the memorandum had no success.

Hitler, as usual in questions of strategic nature, rejected Keitel's point of view as unconvincing.

In this connection and due to Hitler's strict refusal, Keitel asked for release and transfer to the front. This is the case which Reich Marshal Goering confirmed in his interrogation. Hitler refused, sharply criticizing the habit of Generals asking to be released or tendering their resignation whenever he (Hitler) did not approve their opinions or suggestions. That settled it for Keitel: he remained in his post, did his duty, and fulfilled his obligations in carrying out the tasks falling to him within the frame work of further preparations. Here, too, in keeping with his conception of duty, Keitel did not make known to the outside world his basically negative attitude towards the war with Russia, after Hitler had made his decision.

This case is in several respects typical of Keitel and his judgment by others. We know—and it has been proved by the evidence—that other Generals were also opposed to war with the Soviet Union. Their objections, too, were dispersed or rejected by Hitler. They, too, accepted the decision of the Supreme Commander of the Wehrmacht, continued to do their duty and carried out the orders given to them.

But there was one basic difference: these other Generals went back to their Headquarters after the discussion. There, in their own circle of officers they spoke about the decision made by Hitler. Of course, it was disputed, but they acted in accordance with it.

Since Field Marshal Keitel, due to his military conceptions as already depicted did not make public to the generals, when they appeared in the Fuehrer Headquarters for discussions, his own attitude, although it too was at variance, the impression was bound to be created that Field Marshal Keitel completely agreed with Hitler and did not support the scruples of Wehrmacht branches.

Thus the opinion was created in the course of time and disseminated through the entire army that Field Marshal Keitel was a "Yes man", a tool of Hitler, that he was betraying the interests of the Wehrmacht. These generals did not see and were not interested in the fact that this man maintained a constant battle day after day over all possible problems with Hitler and the forces which influenced him from all sides.

This picture which definitely did not apply to Keitel, especially not in the sphere of strategic operations—planning and execution—as has been stated here in detail, became a distorted picture which has maintained its effect up to and in these trials. Maybe not without the fault of the defendant Keitel. About the justification of his conception of duty there can basically be no argument, it has been confirmed here by the witness Admiral Schulte-Moenting to be true for the defendant Grand Admiral Raeder, too. There can be no doubt that the other Admirals and Generals took basically the same point of view, that it is impossible in the military sphere to criticize before subordinates the decision of a superior as expressed in an order, even if one has scruples against the order oneself.

One may say that every principle, every basic rule must be interpreted and used in a reasonable way, that every exaggeration of a good principle means its devaluation. In the case of Keitel this objection touches the problem of his responsibility and guilt altogether.

Does the non-recognition of the point where a principle in itself correct is being exaggerated and in this way endangers the goods for the protection of which it has been established constitute guilt?

In the case of Keitel we must consider the root of this soldierly principle: the thoughts and ideas which the defendant Keitel had in this connection were the following:

It is undeniable that the principle of obedience is necessary for all armed forces; one may say that obedience—a virtue in civilian life and therefore more or less unstable in its application—must be the essential element of the military character, because without this principle of obedience the aim which is to be accomplished by the armed forces could not be accomplished.

This aim, the security of the country, the protection of the people, the maintenance of the most valuable national possessions, is so sacred that the importance of the principle of obedience cannot be evaluated high enough. From this springs the duty for those who are called upon to preserve that national instrument, the Wehrmacht, within the scope of its higher task, to emphasize the importance of obedience. But what the General demands of the soldier, because it is indispensable, must remain in force for himself, too. The same applies to the principle of obedience.

It would now be dangerous to relax an order or even an essential principle by from the beginning pointing out exaggerations and taking them into consideration. Such relaxation would leave the principle of decision to the individual, which means to his judgment. There might be such cases, where the decision depends or must be made dependent on actual circumstances. In principle, such relaxation would lead to devaluation, even to the abrogation of the principle. In order to prevent this danger and to eliminate any doubt as to its absolute importance, the principle of obedience has been changed in military life into one of "absolute obedience" and embodied in the military oath. This, too, is valid for the General as well as for the common soldier. The defendant Keitel has not only grown up in these ways of thinking, but in the 37 years of his military service (up to 1938), among it in the first World War, he had also come to the conviction that this principle of obedience is the strongest pillar upon which the Wehrmacht rests and with it the security of the country.

Deeply imbued with the importance of his profession, he had served the Kaiser, Ebert, and von Hindenburg in accordance with this principle. But while they, as the representatives of the State, had in some way an impersonal and symbolic effect on Keitel, Hitler, from 1934, at first appeared the same to him, i.e. without any personal touch, in spite of the fact that his name was mentioned in the military oath, but only as representative of the State. In 1938, Keitel, as Chief of the OKW came into the immediate circle and the personal sphere of activity of Hitler. It would appear to be important for the further development and for the judging of Keitel, to realize that Keitel was now exposed to the direct effects of Hitler's personality, due to the soldierly conception of duty which was especially developed in him, and due to the pronounced feeling for soldierly obedience. I incline to the assumption that Hitler had clearly realized, in the preliminary discussions with Keitel which led to the Fuehrer order of 4 February 1938, that Keitel was a personality, such as he had included in his calculations:

> A man upon whom he could rely as soldier at any time, who was devoted to him in convinced soldierly faithfulness; who could by his appearance, worthily appear for the Wehrmacht in his environment, i.e. for purposes of representation, who by reason of his power of judgment, was an extraordinary organizer, (according to the report of Field Marshal v. Blomberg).

That Hitler consequently strongly influenced this man who really admired him, and that he brought him completely under his charm is a fact which Keitel himself has admitted.

It must be remembered, if one wishes to understand, how it could happen that Keitel made out and forwarded orders of Hitler which were incompatible with the traditional conception of a German officer, as for instance the orders C–50 and 447–PS which were submitted by the Soviet Russian Prosecution. By the exploitation of the readiness for action for Germany, which was presumed to be a matter of course for all Generals, Hitler understood how to camouflage his Party-political aims with the defense of national interests, and to present the pending fight against the Soviet Union as an inevitable dispute, even as a defensive war, imposed by positive news reports, in which it was a question of to be or not to be for Germany. (Speech of 24 June 1941, statement of Raeder.)

Therewith Hitler asked the fateful question.

That the conscience of the old officer nevertheless pricked him (Keitel) and that he repeatedly raised objections to the drafts of the orders, although without success, that has been confirmed by General Jodl here in the witness box.

During the cross-examination by the representative of the American Prosecution, the defendant Keitel has openly stated that he was conscious of the criminal nature of these orders, but that he had believed himself to be unable to evade the instructions of the Supreme Commander of the Army and of the Head of the State whose final word against all objections was:

> "I do not know why you are worrying; after all, you have no responsibility. Only I have it towards the German people."

This is the analysis of Keitel's attitude towards the so-called ideologically qualified orders of Hitler.

Keitel's last, and in many cases justified hope, was that the commanders-in-chief and subordinate commanders of the Wehrmacht would in practice either not apply at all or only moderately, these hard and even inhuman orders within the framework of their judgment and their responsibility. In his position, Keitel had only the choice of military disobedience by refusing to forward the orders or of the carrying out of the instruction to forward the orders. Whether and what else he could or should have done, I shall examine in another connection. The question here is to make clear how it happened that Keitel forwarded orders which undeniably violated the regulations of land warfare and humanity, and that he did not recognize the point at which even the strict duty of the soldier to obey must end, by reason of his duty to obey, of his sworn faithfulness to the Supreme Commander, and of the fact that he saw in the order of the Head of the State the absolution of his own responsibility.

All soldiers who appear here as defendants or as witnesses have referred to the duty of allegiance. They all, even so far as they sooner or later recognized that Hitler had drawn them and the Wehrmacht into his egocentric and risky game, have considered the oath of allegiance as given to their country, and have believed that they must continue their duty under circumstances which must appear inconceivable to us and to them themselves, after realizing the resulting disaster. Not only soldiers like Raeder, Doenitz and Jodl, but also Paulus have kept their positions and have remained in their posts, and we have heard the same from other defendants, too. The statements of the defendants Speer and Jodl in this connection were deeply moving.

It must be examined as to whether these facts relieve the defendant Keitel of a punishable responsibility. Keitel does not deny that his is a heavy moral responsibility. He has recognized that whoever played even the smallest part in this terrible drama, cannot feel himself free from a moral guilt in which he was entangled.

If I nevertheless emphasize the legal point of view, I am so doing, because Justice Jackson has expressly referred, in his speech for the Prosecution, to the law as basis for your verdict—to international law, the law of the individual states, and to the law which the victorious powers have embodied in the Statute.

I herewith state that the defendant Keitel has recognized that some of Hitler's orders violated international law. The Statute has determined that a soldier cannot refer to an order of a superior or of a Government in order to clear himself. At the beginning of my statement I have asked you to examine whether, independent of the terms of the Statute, the principle is unimpeachable that the standard for what is right or wrong can be settled on a national basis only.

[The Tribunal called Dr. Nelte's attention to the extreme length of his speech, and at this point he omitted some material.—Ed.]

Hitler was the exponent of an idea. He was not only the representative of a party political program, but also of a philosophy which divided him and the German people from the ideology of the rest of the world. All toleration and all compromise was unknown to him as a convinced enemy of the parliamentary democracy, possessed by the idea of the correctness of his ideology. This led to an egocentric ideology which recognized only his own ideas and his own decisions as right. It led to the "Fuehrer State", in which he was enthroned on a lonely height as incarnation of this faith, unapproachable by all scruples and pretexts, distrustful of all whom he suspected as potential dangers to his power, and brutal, if something crossed his ideological course.

This character picture which has been verified by the evidence, is incompatible with the assumption of the prosecution that a partnership of interests could have existed between Hitler and the defendant. There was no partnership of interests and no common planning between Hitler and the men who were supposed to be his advisers. The hierarchy of the Fuehrer State, in association with the Fuehrer order No. 1, which expresses the separation of work in its most flagrant form, admits only the conclusion that the so-called co-workers were only executive mouthpieces or tools of an overwhelming will, but not men who translated their own will into deeds. The only question therefore, which can be raised, is whether these men were guilty in that they put themselves at the disposal of such a system, and that they submitted to the will for power of a man like Hitler.

This problem needs a special examination, as far as soldiers are concerned; because this "submitting to somebody's will", which is remote from the existence of a free man, is for the soldier the basic element of his profession: Obedience and the duty of allegiance which exist for the soldier in all political systems.

The legal problem of the conspiracy in the sense of the indictment is dealt with by my colleague Dr. Stahmer. In the individual case of the defendant Keitel I should only like to point out two sentences of the speech as starting point of my statements:

1. "It is not sufficient that the plan is common to them all, they must know about it being common to all of them, and each one of them must accept voluntarily the plan as his own."

2. "That is why a conspiracy with a dictator at the head is a contradiction in itself. The dictator does not conspire with his followers, he does not conclude an agreement with them, but he dictates."

Dr. Stahmer has pointed out that no one acting under or on account of pressure can therefore be a conspirator. I should like to modify this for the circle, to which the defendant Keitel belonged. It would not conclusively represent the real circumstances if it were said that the defendants belonging to the military branch have acted on account of or under pressure. It is correct to say that soldiers do not act voluntarily i.e. of their own free will. They must do what they are ordered, without it mattering whether or not they approve of it. The training of will power or in any case consideration of the training of will power is accordingly eliminated in connection with soldiers' duties; it will always and everywhere be eliminated on account of the nature of the military profession, and it cannot appear as a determinative factor in the genesis and execution of orders, if the absolute Fuehrer principle is not in force in the Wehrmacht. The question, therefore, in this military sphere is not one of an abstract and with it theoretical deduction, but of a compelling conclusion resulting from the nature and from the practice of the military profession, when I say:

"The activity of the defendant Keitel was founded on the basis of military orders. The activity of the defendant Keitel concerning the genesis of orders, decrees and other measures of Hitler, even in so far as they are criminal, cannot therefore be considered as partnership work, i.e. as the result of a common planning within the meaning of conspiracy. Keitel's activity concerning the execution of orders consists in the due transmission of orders in the Operations Sector and in the due carrying out of orders in the administration of war, i.e. the so-called Administrative Sector."

These activities however could be juridically qualified, the prosecution has, as I think, so far submitted nothing which could possibly refute this consideration.

This is the principle of any soldier and is adopted in every place where the system of orders holds good. The significance of this assertion is particularly important in the case of the defendant Keitel. It would be possible to oppose such a presentation of evidence by considering that Keitel did not act as a soldier or in any case as soldier only and that therefore he cannot be considered responsible for the consequences of what is merely a system of orders. The unfortunate structure of his position and the manifold tasks, of a chief of the OKW, sometimes even not systematically conceivable, dim the recognition of the primary conceptions regarding the defendant Keitel, namely that whatever he, Keitel, did, with which authority or organization he dealt or was in contact with, he always acted as a soldier, and it was always the general—or particular order of Hitler, which placed him in the foreground and sent him into action. The facts of conspiracy seem to me comprehensibly and logically incompatible with the tasks of a soldier and with Keitel's position as head of the OKW.

In all the cases where the statements of the prosecution have claimed conspiracy to be prejudice, the purpose of this conspiracy is an activity, performed by members of a gang departing from their normal and private activity. The result of this is—on the contrary—that any activity practiced by somebody on the strength of his vocation or employment cannot be called conspiracy. In the case of a soldier it may be added that he does not act on his own initiative but in accordance with orders. A soldier might therefore well take part in a conspiracy, directed against the duties he has undertaken as a soldier but never can his activity within the framework of his military functions be designated as a conspiracy.

The conduct of the war in the East affected relatively little the OKW, the WFSt included. When I say the OKW I mean the Staff OKW. It is well known that Hitler as OKW, i.e. Supreme Chief of the Wehrmacht dealt himself with all matters concerning the conduct of this ideological war of his own and interfered in it. The army led, but Hitler was in steady and close collaboration with the Supreme chief of the Army and with its Chief of the General Staff, until December 1941 when, after having taken over the supreme command of the Army he also took over the direct leadership.

This personal union of a German High Commander of the Wehrmacht and Commander in Chief of the Army evidently led to many mistakes which resulted in the severe charges against the German High Command as Staff of the General High Command and its Chief of Staff General Keitel.

Keitel himself feels heavily enough the guilt of the whole complex of the war against Russia which he has frankly stated in the witness box. It is therefore not only understandable but also the duty of the defense to clarify Keitel's responsibility for all these facts of the most terrible atrocities and incredible degeneration.

For the purpose of an easier understanding of these matters, which are often most complicated, I handed the affidavit of defendant Keitel to the Tribunal (Document book II Exhibit No K 10). I refer to it without reading its contents.

It seems to me of importance to emphasize that from the very beginning the war against the Soviet Union has been subject to three factors for its execution:

1. Military operations and orders: Commander in Chief of the Army.
2. Economics: Four Year Plan.
3. Ideology: SS-organizations.

The German High Command (Keitel) had no competent influence upon these three factors and no authoritative power. Neither can it be contested that in the course of his aforementioned truly anarchistic methods of work, Hitler, when all is said and done held all the strings in his hands and used sometimes the German High Command for forwarding of his (Hitler's) orders, nor is it qualified to change the principal responsibility.

Considering the wide extent of the material produced by the Soviet Prosecution, I can refer within the compass of my statement only to a comparatively small number of the documents. These documents however are symptomatic of many others. To begin with I will discuss the documents USSR 90, 386, 364, 366, 106, 407, all of which have been produced by the Prosecution for the purpose of proving Keitel's responsibility.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

If in this connection I discuss the official reports of the Investigating Commissions, then I do so because they have been presented in order to incriminate Keitel, but actually of themselves give proof that the accusation against Keitel and the OKW (Staff) are not based on any reasoning in these very weighty prosecution charges.

From the large number of documents in this connection I have dealt with USSR 9, 35 and 38. In these official reports, which implicate the Supreme Command of the Armed Forces, any concrete facts are lacking which might refer to the staff of the OKW—that is, Keitel—as the perpetrator or initiator of these atrocities.

As to the actual contents or statements of the documents, I am merely pointing out that Keitel, in his position, had neither the authority nor the possibility to give orders which led to the crimes asserted.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

In the documents previously cited either Keitel or the OKW has been mentioned as at least responsible. There are many such official reports, however, which have been cited in the presentation of the prosecution as proof of Keitel's guilt and in which neither the defendant nor the OKW is even mentioned.

This is true of Documents USSR 29, 39, 45, 46 and 63. * * *

I can only request the Tribunal to examine the remaining documents equally carefully to that effect and to ascertain whether, if they are submitted in connection with Keitel and the OKW, they allow any final conclusion regarding Keitel's guilt or whether that is not the case in the documents which have been presented.

The Economic Spoliation of the Occupied Territories

(The Economic Armament Office—OKW in the war)

In the war against Poland, as well as later in the West (further extended on the basis of experiences in Poland) expert personnel trained in military economy were attached from the Armed Forces Economic Office (Wehrmachts-Wirtschaft) in the form of small staffs and detachments to the army groups and army high commands, as expert advisers and assistants in all military economic questions which resulted from the conquest and occupation of economically and industrially valuable territories.

The Economic-Armament Office, together with the OKW, prepared the organization of these expert groups and the technical detachments in advance organizationally. By and large, they consisted of:

a. Expert advisers with the unit staffs (first called liaison officers of the OKW/Economic-Armament-Office) *b.* Reconnaissance Staffs for war economic important factories and raw materials.

c. Technical detachments and formations for security, repairs, and protection from destruction of war essential and vital plants and supply installations.

This organization was prepared by the OKW (Economic-Armament Office) for the reason because it depended on expert research personnel from all three branches of the Wehrmacht and the civilian economy, as well as the "technical emergency aid" (Technische Nothilfe). The army completed the setting-up itself.

The organization was subordinated to the senior troop commanders in charge. Their employment takes place exclusively on the orders of the troop command, for which the expert adviser submitted suggestions from time to time to the unit staffs (the General Staff Ib or the Chief Quartermaster).

The missions of these technical detachments were:

a. Advising the leadership concerning the importance and significance of industrial plants and supply installations (power, water, electrical current, repair plants, mines etc.),

b. Protection of these installations from destruction by the enemy and our own forces, for example, stripping of the most valuable parts, plundering,

c. Utilization for the purpose of our own conduct of war for our own troops and population,

d. Examination of the war essential and vital plants and establishment of their productive capacity for our own use,

e. Establishment of the raw material supplies of metals, ores, coal, fuels, etc. for the reindustrialization or our own use for our own conduct of war.

All functions with the exception of those mentioned under *d* and *e* served exclusively for the supplying of the fighting troops, the occupational troops, and the native population. The statistical collections *d* and *e* were reported through military channels to the competent offices at home (General Plenipotentiary for Economy, Four Year Plan, Minister of Armaments), which had to make disposition concerning use and utilization. The Wehrmacht itself had no independent right of action.

It is correct that (according to the Thomas Book 2353–PS) raw materials and also machines were removed to Germany, for the production of the implements of war as the prosecution charges, since both had served the enemy conduct of war and had to stop production.

A military agency could not order the removal to Germany, because it had no right at all to dispose of "booty" of this sort. The three highest Reich authorities mentioned alone could instigate the removal on the basis of a general authority by the Fuehrer or a special order by Hitler to the Supreme Commander of the army. The OKW and the Chief of the OKW, as well as the Economic-Armament-Office, had no right of disposition and command outside of their own fields, as little as there existed an individual chain of command from the OKW/Economic-Armament-Office to these detachments. The message and report chain went over the unit staffs to the OKH Quartermaster General, with whom the highest Reich authorities (Food, Economy, Armament Ministry, Four Year Plan) had representatives and reported to their departmental chiefs. Orders by the defendant Keitel as Chief of the OKW concerning utilization, use or seizures of economic goods have not been given; this follows from Document 2353–PS.

The unified leadership of the entire war economy in France and Belgium was then delegated to Reich Marshal Goering as Commissioner of the Four Year Plan, by the Fuehrer Decree of 16 June 1940.

For the judgment of the responsibility, it is of significance that the staff of the Economic-Armament office examined the problems which concerned the armament economy and utilization of economy in the occupied territories. The legal opinions, which were regarded for this as decisive, are assembled in document EC–344, and namely of the Foreign Department in the OKW (Department Chief Admiral Canaris).

Referring to Articles 52, 53, 54, and 56 of the Hague Convention of Land Warfare, it is explained in connection with total warfare that the "economic rearmament" must be regarded as belonging to the "war effort" (Kriegsunternehmung) and accordingly all industrial supplies of raw materials, half and finished manufactured goods as well as machinery, etc. are to be regarded as serving the war effort. Therefore, according to the viewpoint of the author, of this opinion, all these goods are liable to be seized and used—against compensation after the conclusion of peace.

Furthermore, the problem of the necessity of war is examined and Germany's state of economic emergency of that time is already affirmed. For the judgment of the defendant Keitel this opinion is of significance insofar as the well-known foreign department under the responsible leadership of Admiral Canaris still in November 1941 practically proved an opinion which justified the economic utilization of the occupied countries. That was the office which concerned itself with problems of international law and on which the defendant Keitel based his confidence.

An organization for all economic requirements, for surpassing the former organization, was created on the basis of the experiences in the West by Reich Marshal Goering, through a General delegation of authority by the Fuehrer.

The chief of the Economic-Armament office with State Secretary Koerner prepared this organization for Reich Marshal Goering—without participation by the Chief of the OKW.

The Chief of the OKW has for this purpose put General Thomas at the disposal of Reich Marshal Goering. The Chief of the OKW did not acquire any influence at all on this organization and severed his own and the OKW's connection with it after Reich Marshal Goering had received full powers and the OKW had put General Thomas at his disposal.

General Thomas thus acted alone in this connection, commissioned by Reich Marshal Goering. The OKW and defendant Keitel were neither under Reich Marshal Goering's orders nor bound by his instructions. Defendant Keitel was not represented in Goering's Economic Staff and had nothing to do with the Eastern Economic Staff. (See Thomas Book Page 366).

The execution of the work was centrally directed by the Economic Operations Staff in Berlin as part of the Four Year Plan. The local higher command in the Eastern district was under the Eastern Economic Staff.

To this organization was also attached the Troops' Supply Department.

The OKW, and defendant Keitel as chief of the OKW, never issued orders concerning the exploitation, administration or confiscation of economic property in occupied territory. This is revealed by the book submitted by the prosecution, Document 2353–PS. On page 386 of this document, Thomas, in summarizing correctly stated as follows:

"The Eastern Economic Operations Staff under the Reich Marshal or State Secretary Koerner, was responsible for the whole economic direction of the Eastern area; the State Secretaries were responsible for departmental instructions; the Economic Armament Office was responsible for the reconstruction of the economic organization; the Eastern Economic Operations Staff was responsible for the execution of all measures.

The same is shown by Document USSR 10: "Directives (of Reich Marshal Goering) for the unified conduct of economic management in the zone of operations and in political administrative areas to be subsequently established."

This ought to prove that the OKW and Keitel are clear of any responsibility for the consequences attendant upon carrying out the measures within the scope of the Barbarossa-Oldenburg operation.

The French prosecution have charged defendant Keitel personally with war crimes and crimes against humanity. The accusation concerns putting to death French civilians without judicial decision. In this connection, the cases of Oradour and Tulle were particularly emphasized. They are recorded in a report by the French Government (Doc. F. 236). The French prosecution declared: "Keitel's guilt in all these things is undoubted". (Page 3659 of the transcript).

In this connection, it is not my business to discuss the frightful happenings of Oradour and Tulle. As defense counsel for defendant Keitel, I have to examine whether the assertion of the prosecution that defendant Keitel bears any guilt or responsibility in these atrocious occurrences is founded.

You will understand that defendant Keitel is particularly intent on producing evidence to the effect that he is not responsible for these terrible occurrences and furthermore that when such things came to his knowledge, he was anxious to have them cleared up in order that the actual offenders might be brought to account.

It is incontestable that Keitel had no direct participation in these crimes. Any responsibility and guilt of the defendant can therefore be derived only from his official position. No orders of any kind bearing Keitel's signature have been submitted by the prosecution, so that whoever is guilty, Keitel does not, at any rate, belong to the circle of those directly responsible.

The horrible wrongs suffered by a large number of French villages are recorded in the Notes of General Berard dated 6 July and 3 August 1944 (included in Collective Document F 673). I already pointed out, when this document was submitted, that by the submission of these notes of complaint alone, that is without simultaneous production of the replies, which are also in the possession of the prosecution, no objective picture can be presented of the facts as they are for a pronouncement on the guilt of defendant Keitel. As defendant Keitel, owing to his lack of authority to issue orders in the matter, cannot possibly be taken into consideration as the author of the orders which led to the complaint any responsibility and guilt of Keitel's can therefore be proved only by the fact that he did not cause the necessary steps to be taken after being informed by the German Armistice Commission. Whatever Keitel did or failed to do can be gathered only from the reply notes and from the stipulations of the OKW to the German Armistice Commission. [Sentence omitted.—Ed.] Counterevidence would indeed be impossible for defendant Keitel even in this case, had not the French prosecution themselves submitted a document (F 673—Letter of the OKW dated 5 March 1945, signed Keitel) which was to serve as proof of Keitel's individual guilt. This document is worded as follows and was read by the French prosecution at the session of 31 January 1946. (Pages 3660/3661 of the transcript.)

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

This document shows:

1. Upon receipt of the French memorandum of complaint of 26 September 1944, OKW issued orders to the German Armistice Commission to investigate and handle this matter.
2. Thereupon the German Armistice Commission instructed Commander-in-Chief West to investigate the incidents.
3. Upon receipt of a letter from Army Group B, OKW expressed itself as follows:

"It was in the German interest to answer these charges at the earliest possible moment."

"The manner in which this case was handled indicates that perhaps there still exists a great deal of ignorance as to the importance to be attached to all reproaches against the German Wehrmacht, to counteract any enemy propaganda and to refute immediately any purported German acts of atrocity. The German Armistice Commission is hereby instructed to continue giving this matter attention with all possible emphasis. It is requested to render any assistance possible and especially to take all steps for expeditious handling of the matter as far as it regards your own sphere of action. The fact that Pz. AOK 6 (Armoured Unit AOK) no longer forms part of the forces of Colonel West is no reason to prevent continuation of the needed investigation so as to bring light into and refute the French charges."

It may therefore be safe to say that it has been proved that the defendant Keitel, upon receipt of information, undertook with due energy such steps as were within the scope of his authority and ability as chief of OKW.

This eliminates the prosecution's contention in so far as it has assumed the guilt of the defendant Keitel. At the same time, however, the handling of this case by the defendant Keitel points to the conclusion that he acted in like manner in other cases.

Nacht und Nebel

It may be said that there is hardly any order which during the proceedings of this Tribunal made a deeper impression on people's minds than the order "Nacht und Nebel". By this is meant an order which originated during the fight waged against acts of sabotage and the Resistance Movement in France. As a result of the departure of the troops in connection with the march against the Soviet Union, plots against the security of the German troops remaining in France, especially acts of sabotage against all means of communication increased from day to day. From this resulted the need for increased activity of counter-espionage offices, which led to proceedings and verdicts of military courts against members of the Resistance Movement and its accomplices. These sentences were very severe—in addition to capital punishment imprisonment also. During meetings for discussion of the situation, reports which arrived daily caused violent disputes with Hitler who, as always, was trying to find someone on whom to fix the blame and who, according to Hitler was in this instance to be found in the far too cumbersome handling of military justice. True to his spontaneously explosive temperament, he ordered the working out of directives to create a quick effective and lasting spirit of intimidation. He declared that confinement could not be considered an effective means of intimidation. When Keitel objected that not everyone could possibly be sentenced to death and that Military Courts would, furthermore, refuse to comply, he replied that he didn't mind about that. Cases, where the offense has been established to be so serious as to impose capital punishment without lengthy court proceedings, should continue to be dealt with as heretofore; that in other cases, however, where this was not the case, he ordered the suspected persons to be brought secretly to Germany while withholding all news as to what had happened to them, it being a fact that promulgation of sentences for penal servitude in occupied territory failed to have an intimidating effect in view of the amnesty at the end of the war.

Thereupon the defendant Keitel proceeded to consult with the chief of the Judge Advocate's Office of the Wehrmacht and with the chief of the Foreign Counter-Intelligence Office (Canaris), from whom also came the letter of 2 February 1942 (UK–35) on deliberations as to what should be done. When repeated remonstrances with Hitler to refrain from this system, or at least to relax the demand for complete secrecy failed to have any effect, a draft was finally submitted which became the Decree of 7 December 1941 (UK–35), which we have before us here.

The staff of experts and the defendant Keitel had succeeded in establishing the competency of the Reich Administration of Justice for the persons removed to Germany (see last paragraph of directives of 7 December 1941). Keitel had guaranteed this stipulation by means of the first Enactment-Decree governing the directives, in that he made the clarifying statement (last sentence in par. 1 of IV) that unless otherwise ordered by OKW, the case would be referred to civilian judicial authorities according to section 3, paragraph 2, second sentence. The defendant believed that in such manner he had at least insured that the person involved would have the benefit of regular court proceedings and that according to German provisions for accommodating and treating prisoners upon trial and prisoners serving a sentence, there could be no danger to life and limb. Keitel and his staff of experts believed that they could find comfort in the fact that however cruel the suffering and the uncertainty endured by those concerned might be, nevertheless the life of the departed persons had at least been saved.

In this connection allusion is also made to the version of the cover letter of 12 December 1941. As already stated by the codefendant General Jodl during his examination, there had been adopted a certain wording when the signatory wished to express his dissent with the order submitted. The cover letter begins with the words:

> "It is the well-considered desire of the Fuehrer * * *."

The closing sentence runs:

> "The attached directives * * * comply with the Fuehrer's interpretation."

Persons who received such letters knew from that wording that once again this was an order of the Fuehrer which could not be evaded, and they concluded therefrom that this order should be applied as mildly as possible.

The letter of 2 February 1942 comes from Foreign Counter-Espionage Office III (Amt Ausland/Abwehr) the original of which must have been signed by Canaris. At that time the defendant was not in Berlin where, after promulgation of the decree of 7 December 1941, the matter was dealt with further. Keitel, at the Fuehrer Headquarters, was not informed of the contents of that letter. In the light of the above remarks, the wording of the letter justified the assumption that a milder carrying out would be made possible through the provision that Counter-Espionage Offices were directed "to see to it that before an arrest is made evidence will be at hand fully sufficient to warrant the transfer of the perpetrator." It was also provided that before the arrest took place the competent military court must be approached in order to establish whether the evidence was adequate.

In Germany the transfer was to be made to the Reich Administration of Justice. Sufficient proof for the correctness of the assumption of the defendant Keitel is found in the fact that in view of the attitude of this Admiral which is sufficiently known to the Tribunal, Canaris would never have ordered the transfer to the Gestapo.

As already stated, the defendant Keitel did not know of the letter of 2 February 1942.

Although the defendant Keitel believed that he had achieved everything possible to safeguard those involved, the "Nacht und Nebel" decree—as it came to be termed later—caused him great mental anguish. Keitel does not deny that this decree is not compatible with international law, and this was known to him.

What Keitel denies, however, is that he knew, or that prior to the Nurnberg trial he knew, that after arrival in the Reich the persons involved were imprisoned by the police and then transferred to concentration camps. This was contrary to the meaning and purpose of that decree. The defendant Keitel could not learn anything about it because after the persons involved were turned over by the competent Law Lords of the Military Courts to the competent judicial authority for transfer to Germany—to be turned over to the Administration of Justice—the competency of the Wehrmacht ceased, unless the case involved proceedings by a Military Court. The defendant Keitel is unable to explain from personal information how it happened that such a great number of persons were brought into concentration camps to experience a treatment described as "N N" such as was described by witnesses who appeared here. Results obtained through evidence presented to this Tribunal lead to the assumption that without so informing military authorities, police authorities indicated as "N N" prisoners all politically suspicious persons who, on the basis of political measures, were removed from occupied territories to Germany to be placed in concentration camps. According to evidence, persons held in "N N" camps were primarily people who had not been sentenced, after formal proceedings by Military Courts in occupied territories, to be brought to Germany.

It therefore becomes evident that the police authorities in occupied territories made use of this decree as a general and unrestricted charter for deportation, exceeding every imaginable measure and regardless of the prerogatives of the military authorities alone, and the rules of procedure imposed upon them.

The fact that such a situation was at all possible in occupied territories without the knowledge of the Wehrmacht authorities can only be explained by the fact that as a result of the appointment of Senior SS and police chiefs, the carrying out of police duties was withdrawn from the military authorities, and that these higher SS and police chiefs received their orders from the Reich leader SS.

At no time were the Reich leader SS and Senior SS and police chiefs given the right by OKW to make use of the decree, intended to be used as a police executive measure by the Wehrmacht alone. The decree was valid only for the offices of the Wehrmacht in whom judicial authority had been vested, and its wording was explicit and restricted along that line.

The letter of the German Armistice Commission of 10 August 1944 (843–PS) proves that OKW had indeed no knowledge of this improper application of the decree of 7 December 1941. It says therein:

> "* * * that the basis for arrests seems to have undergone a change in that, in the beginning, individual incidents and violations of law or attacks on the Occupation Power were involved; in other words it meant the apprehension of elements who had been definitely active in certain cases and who were liable to punishment according to the Hague Convention (Hague LKO) while, at present, there are also numerous persons being deported to Germany who because of their anti-German sentiments are being removed from France as a precautionary measure."

Under Figure 4 that letter reads as follows:

> "A prerequisite for application of the above-mentioned decree is that the persons arrested will be made the subject of judicial proceedings. There seems to be reason for assuming that because of the number of cases, especially within the compass of precautionary measures, such proceedings are now frequently being dispensed with and the prisoners are no longer held confined in investigation or penal institutions of the German legal authorities but in concentration camps. Also in that respect an essential change has taken place as compared with the original provisions of the decree."

In the reply of OKW dated 2 September 1944, signed by Dr. Lehmann, (chief of the OKW Judicial Department) explicit reference is made to the directives for the Fuehrer decree of 7 December 1941, the so-called NN decree. In it nothing is said that the original presuppositions for deportation to Germany were changed.

This reply, however, was sent from Berlin without the knowledge of the defendant Keitel; the letter also of the Armistice Commission was evidently sent to Berlin. The We Re office was in Berlin. Keitel himself was at the Fuehrer Headquarters and learned nothing of the exchange of correspondence.

It should be pointed out that it was a grave sin of omission not to have immediately replied to the letter of the German Armistice

Commission of 10 August 1944 and to explain that this was a case of improper application of the decree of 7 December 1941 and the directives issued relative thereto. An investigation should have been initiated at once so as to take to task those responsible for this abuse.

Insofar as the Tribunal regards Hitler's military staff as guilty, the defendant Keitel takes the responsibility within the extent of his responsibility as chief of the OKW.

The defendant Keitel is accused by the prosecution of having participated in the deportations for the purpose of labor commitment. In this connection, Keitel declares, that in conformity with his jurisdiction he did not have anything to do with the procurement, recruiting, and conscription of people in the occupied territories, nor with the assignment of the labor forces thus procured, for the armament industry. Codefendant Sauckel gave the following testimony as a witness on 29 May 1946 (Page 10484 of German Transcript):

Q. You mean by that, that the OKW and the defendant Keitel had no functions whatsoever appertaining to the matter of procurement, recruiting, and conscription of labor forces in the occupied territories?

A. He had no function whatsoever appertaining to this matter. I got in touch with Field Marshal Keitel because the Fuehrer frequently charged me to ask Field Marshal Keitel to transmit his orders by phone or by instructions to the Army groups.

Q. (Excerpts) Did the OKW and in particular Keitel as chief of the OKW have any function appertaining to the question of labor commitment in the homeland?

A. No; because the commitment of workers took place in the economic branches for which they had been requested. They had nothing to do with the OKW.

During the cross-examination by General Alexandrov, documents were presented which according to the opinion of the prosecution are to prove the participation of Keitel and the OKW. In this connection it must be examined whether and in what way the OKW and Keitel had participated in the sphere of duty of defendant Sauckel as General Plenipotentiary for Labor Commitment (GBA). Document USSR–365 presented by the prosecution contains the basic provisions concerning spheres of tasks and powers of the GBA, the decree of 21 March 1942 about the appointment of Sauckel as GBA, the order of Goering as commissioner for the 4-year Plan dated 27 March 1942, the program for labor commitment, and the task and solution, as imagined by Sauckel.

These documents give expression to the relationships and contacts of the GBA with many offices. These relationships and contacts vary qualitatively.

Clear is the jurisdiction and the official channels in the sphere of tasks of the GBA. He is the spokesman for the 4-year Plan (No. 3 order of 27 March 1942) and he was therefore subordinate to Reichmarshal Goering and Hitler, who was identical with the 4-year Plan. The relationships and contacts of the OKW, or Keitel with the GBA and his sphere of tasks according to the outcome of the evidence (testimony of Keitel, Sauckel, and the documents) were as follows:

The replacement system for the whole Wehrmacht was under the jurisdiction of defendant Keitel in his capacity as Chief of the Supreme Command of the Armed Forces (OKW). Losses at the front were reported to the OKW by each individual branch of the Wehrmacht and at the same time replacements were requested.

On the basis of these requests, Keitel submitted a report to the Fuehrer, according to which replacements had to be procured for the troops of the various branches of the Wehrmacht at certain designated times by the service commands through their replacement inspectorates.

The replacement inspectorates consequently called the recruit year group or beyond its drafties who had been deferred up to that time. With the war progressing, the result was almost invariably for instance that the Armament Ministry (for the deferred employees of the armament industry), the Ministry for agriculture (for the deferred employees of agriculture), the Transportation Ministry (for the deferred employes working for the Railroad), etc., made the greatest difficulties for the demands of the replacement authorities, and protested against them.

They pointed out that the tasks of the various departments would have to suffer dangerously if the deferred employees were removed without further ado. The competent Minister requested that, before the release of deferred employes, new workers should be procured to make up for those released.

Therefore, the matter was referred by way of the labor offices to the General Plenipotentiary for Labor Commitment (GBA), whose task it was to procure the necessary manpower for the domestic labor commitment required. The defendant Sauckel as GBA, who personally did not have at his disposal, except for special deputies, an independent organization of his own for the recruiting, procurement, and possible conscription of labor forces was therefore forced to get in touch with the competent authorities in the occupied territories for the execution of his task.

a. In the occupied territories of the civil administration, Holland, Norway, (East), it was the Reich Commissioner who had to assist Sauckel.

b. In the territories under military commanders (France, Belgium to the Balkans) it was the General Quartermaster of the Army.

c. In Italy it was in highest instance the accredited Ambassador Rahn.

This is obvious from the decree of 27 March 1942.

GBA Sauckel, before he became active in the execution of his task in the various territories, turned invariably to Hitler, whose subordinate he was with respect to the 4-year Plan, in order to obtain through his instructions the necessary backing by the local authorities. This was done in such a way that the order was issued to the local authorities to give Sauckel the assistance which he considered necessary for the execution of his task. The defendant Keitel was not present at such discussions between Hitler and Sauckel. The defendant Keitel had no jurisdiction or competence in these questions. However, somebody had to inform the local authorities about Hitler's orders, and the result was that Hitler who did not recognize any difficulties of jurisdiction, told the next best man to inform the local authorities about Sauckel and to point out Hitler's wish to grant him all the necessary assistance. These "next best" were either Keitel for the military administration of the occupied territories or Dr. Lammers for the territories under civilian administration.

This was the contact which existed between Keitel and Sauckel in this matter. How in detail the recruiting or other procurement of labor was carried out was not within the competence of the OKW. The latter did not receive any reports on the matter either. The interest of the OKW was exclusively limited to the fact that the required number of soldiers were placed at his disposal through induction by the replacement authorities. In particular, the OKW and the defendant Keitel had nothing to do with the commitment of labor of the workers procured by the Plenipotentiary General for Labor Commitment into the war economy, but rather this was solely the business of the labor offices where the firms requiring labor of the economy requested the workers deemed necessary.

1. The name of Keitel stands at the beginning of Sauckel's activity, as submitted by the prosecution, because Keitel was co-signor of the Fuehrer decree concerning the General Plenipotentiary for Labor Commitment (Doc. USSR–365). From the repeated reference of the prosecution to this fact the conclusion

must be drawn that it apparently sees in this co-signatory act of the defendant Keitel the beginning of a chain of causes, at the end of which stood frightful happenings as were presented here.

To this I refer to the significance expounded in another place of the co-signature by Keitel as chief of the OKW of such decrees of the Fuehrer. This fact, which penally cannot be considered as determinative, is also not a guilt, because of the lack of conception of the events occurring during the further course of events.

2. If the Fuehrer's decree of March 1942 provides the legal origin of the General Plenipotentiary for Labor Commitment (GBA), the first step in the participation of this official is also connected with the name of Keitel as head of the OKW, as the personnel replacement matters were subordinated to him and he made his requests for replacement of losses at the front to the subordinate military replacement offices. Here also the same applies as in paragraph 1, as neither an appreciable determinative effect nor a penal fault are involved.

3. Owing to the situation resulting from the shortage of manpower, there came into being a purely factual connection between the military personnel requirements and the requirements of the economic replacement of workers without Keitel coming thereby in contact with the GBA either as regards competence or orders.

Sauckel confirmed the statement of Keitel that the OKW had nothing to do with the recruiting, levying, or otherwise procuring of labor, nor with the commitment of the labor procured to German economy (German Minutes of May 29, 1946).

Now the French prosecution, during the cross-examination of Sauckel, has submitted four documents tending to prove the active participation of the OKW and of the defendant Keitel in the deportations. These are Documents 1292–PS, 3819–PS, 814–PS, and 824–PS.

The first document is a report of the chief of the Reich Chancellery Dr. Lammers regarding a conference with Hitler, during which the question of procurement of labor for 1944 was discussed. The defendant Keitel took part in this discussion. Annexed to this report a letter from the defendant Sauckel of 5 January 1944 is reproduced in which the latter summed up the results of the conference of January 4th and proposed a decree of the Fuehrer. I quote the following parts therefrom:

> "5. The Fuehrer pointed out that it was necessary to persuade all the German offices in the occupied territories and in the allied countries of the necessity of taking in foreign labor, in order to be able to support unanimously the General Plenipotentiary for labor commitment in carrying out the required organization, propaganda and police measures."

* * * * * * *

"2. The penultimate paragraph:
The following offices should in my opinion receive the decree in the first place: ...."

* * * * * * *

"1. ....

"2. ....

"3. The Chief of the OKW, General Field Marshal Keitel for instructions to the military commanders in France and Belgium, to the military commander South-East, the Plenipotentiary General accredited to the Fascist Republican Government of Italy, the chiefs of the Army Groups in the East."

The document therefore proves (*a*) that Field Marshal Keitel took part in a conference, without stating his point of view on the problem of labor procurement, (*b*) that the Fuehrer decree was to be brought to the knowledge of Field Marshal Keitel for the purpose of instructing the military commanders. What defendant Keitel admitted as to his points of contact with this question is thereby confirmed.

The 2d and 3d documents refer to a conference in the Reich Chancellery on July 11, 1944, in which Field Marshal Keitel took no part.

Now the French Prosecutor made the statement that the teletype (Doc. 814–PS, 1516–PS) is an order of Field Marshal Keitel to the military commanders to carry out the decisions of the conference of July 11th. Mr. Herzog has said in this connection that Keitel's order was dated July 15, 1944. A cursory examination of the document—a photostat—shows that the document concerned is a teletype of July 9th containing an invitation from the chief of the Reich Chancellery Dr. Lammers to a conference on July 11th, which Keitel transmits to the military commanders. The conclusions of the Prosecution, based on this document, are therefore also invalid, but the document is also interesting from another point of view. It states therein verbatim:

"The following directives are for the instruction of the military commanders or their representatives:

Present situation requires using every possible means towards procuring additional labor, as all armament measures benefit in first place the fighting troops. On the other hand any apprehension regarding internal troubles, increasing resistance movement and so on must be set aside. Every help and assistance is to be given the GBA. I refer to my directives for the collaboration of the Wehrmacht in the procurement of labor from France (OKW/West/Qu (Verw.1)/2 West No. 05201/44 secret."

The defendant Keitel requested me to call the attention of the Court to this method of expression for the following reasons. Numerous documents bearing the signature "Keitel" have been submitted here. According to Keitel's attitude, already explained, which excluded any show of authority, he never used the "I" form in his communications or transmission of orders. The prosecution only submitted one other teletype of the defendant, apart from this document, in which the "I" form occurs. Considering the many documents which confirm this admission of Keitel, his statement that here the transmission of an order of the Fuehrer was in question must be believed, also that the style of wording which I quoted corresponds to an order from the Fuehrer.

General Warlimont (Doc. 3819–PS) refers, during the conference of 11 July, expressly to a "recently issued Fuehrer order", the contents of which he reproduces exactly as contained in the teletype directive with the signature "Keitel".

Important as confirming this evidence of the defendant Keitel is likewise the newly submitted document 824–PS, RF 1515. This is a letter of July 25, 1944, from the Commander-in-Chief West (von Rundstedt), who in the meantime had become the Chief of the military commanders in France and Belgium. It is said therein that: "by order of the Fuehrer the demands of the GBA and of Speer are to be fulfilled", further that in the event of evacuation of the battle area, measures must be taken towards securing fugitives, etc., for labor; finally that reports must be sent in to the OKW regarding the measures taken. The reference to the Fuehrer's order shortly after July 11th shows as well as Warlimont's statement, that there exists no directives from Keitel or the OKW.

It can be considered therefore as proved that neither Keitel himself nor the OKW had any part in measures to levy or recruit labor. The OKW was the office in charge of transmitting the orders which Hitler, as the superior of Sauckel wished to forward to the military commanders; it had no competence and no legal responsibility.

It is not the same in this complex as in the spheres that are within the administrative competence of the OKW, as there existed in this sphere at least a specialized function which included the possibility of voicing doubts.

In the sphere of labor procurement and labor commitment, the points of contact with Sauckel's activities are the following:

1. Keitel was co-signatory of the Fuehrer's decree of March 21, 1942, concerning the appointment of the GBA.

2. He has transmitted Hitler's orders to support the activities of the GBA on the basis of special instructions to the local military authorities of the occupied territories.

Now, at the session of 2 February 1946 (Page 3761 of the German minutes) the French prosecution has, in the matter of the deportation of the Jews within the scope of defendant Keitel's responsibility, stated the following:

> "I shall subsequently speak about the order for the deportation of the Jews and I shall prove that this order came from a joint action of the military government, the diplomatic authorities, and the security police in the case of France. It results from this that—
>
> 1. The Commander-in-Chief,
> 2. The Reich Foreign Minister and
> 3. The Chief of the Security Police and Reich Security Head Office (RSHA),
>
> these three persons, were bound to be informed of and bound to have agreed to this action, for it is clear that by their function they must have known that similar measures, which concerned important affairs, were taken and also that the decisions were taken jointly every time by the staffs of three different administrations.
>
> These three persons are therefore responsible and guilty. * * *"

If you examine the very thorough individual handling of this item indictment (on page 3910 of the German minutes), you will establish that the OKW is not mentioned and that no document is produced which originates either from the OKW or from the defendant Keitel. It follows from the Keitel affidavit, Document Book 2, that the military commander for France, who is mentioned several times, was not placed under the OKW.

Now, the prosecution has, in the handling of this question, attempted to prove the cooperation of the "Army" as Mr. Jaure says, with the Foreign Office and the Police. They believe they can put this cooperation to the account of the highest authorities, i.e., the OKW, in the case of the Army, and therefore Keitel. This production of evidence is erroneous. In order to make that clear, I must point out that there was a military commander in France. This military commander was invested with civil and military power; he represented the nonexistant state power and therefore had police and political functions besides military tasks. The military commanders were appointed by the OKH and received their orders from the latter. As it follows from this, there existed no direct relations with the OKW on this question. Since defendant Keitel, as chief of the OKW, was not placed above the OKH, there exist likewise no indirect relations of either subordination or authority.

What Mr. Faure has said at this point is unfortunately true: "In France, a plurality of jurisdictions manifested themselves, with mutually divergent and even contradictory tendencies which overlapped each other or went counter to their own authority."

Actually, the OKW and defendant Keitel have nothing to do with the Jewish question in France, with the deportation to Auschwitz and other camps; they had neither commanding nor controlling authority and therefore no responsibility.

The fact that the letter K in the telegram, dated 13 May 1942 (Doc. 1215 F) was completed to mean Keitel is indicative of the contention adopted by all prosecuting parties, concerning the presumptive implication of the defendant Keitel. Fortunately, the French prosecutor has corrected this and cleared up the error. (Page 3922 of the German transcript).

The Prisoner of War Question

The fate of prisoners of war has always stirred the feelings of men.

It has been the endeavor of all civilized nations to give the soldiers who fell in the hands of the enemy those reliefs which could be made compatible with the interests of warfare. It has been considered as one of the most important advances of civilization to have achieved an agreement in that case in which the nations were opposed in a mortal clash. The distressing incertitude over the fate of these soldiers seemed to be bridged over, their humane treatment guaranteed, the dignity of the disarmed opponent assured.

Like so many things, our belief in this advance of human society has begun to waiver. Although this belief is still formally upheld—as it has been once and for all by the solid resistance of the general officers—we must nevertheless admit that a brutal policy, oblivious to the Nation's own sons and of anything but its own striving for power has in many cases disregarded the sanctity of the Red Cross and the unwritten laws of humanity.

The treatment of the responsibility of the defendant Keitel in the general complex of the prisoners of war system comprises the following individual problems:

1. The general adjustment of the treatment of prisoners of war, the German legislation on the prisoner of war system.
2. The authority over the prisoner of war camps, divided into Oflag (officers' camps), Stalag (enlisted men's camps), and Dulag (transit camps).
3. The supervision and control of the legislation and its administration.
4. The individual cases which have been brought before the court in the course of the indictment.

As the organization of the prisoner of war system has been set forth in the course of presentation of argument, I can restrict myself to setting forth that the Wehrmacht High Command (Keitel), within the scope of his tasks as War Minister in accordance with the decree of 4 February 1938 by order of Hitler was competent and to that extent responsible—

a. For the ministerial right to issue ordinances within the entire local and professional range, particularly restricted by co-work and co-responsibility in the matter of using the prisoners of war as laborers.

b. Not authorized to have command over prisoner of war camps and the prisoners of war themselves, competent to allocate on a large scale to the corps area commanders the prisoners of war arriving within Germany proper.

c. For the general supervision of the camps within the range of the Wehrmacht High Command (except for those within the range of the zone of operations the rear army area, the area of the military commanders, the Navy, and Luftwaffe prisoner of war camps).

The competent office for this in the Army High Command was the "Chief of the prisoner of war system", who was several times made personally responsible by the prosecution. The defendant Keitel attaches importance to the fact that the Chief of the prisoner of war system was his subordinate over the General Wehrmacht Office (ueber das Allgemeine Wahrmachtsamt). This proves the self-evident responsibility of the defendant Keitel in this domain even in those cases in which he supposedly did not sign orders and decrees personally.

The basic provisions for the treatment of prisoners of war were—

1. The service regulations issued by the Chief of the Wehrmacht High Command within the scope of the normal mobilization preparations and set down in a number of Army, Navy, and Luftwaffe publications.

2. The stipulations of the Geneva Convention special mention of which was made in the service regulations.

3. The general decrees and orders which became currently necessary.

Regardless of the treatment of Soviet-Russian prisoners of war, who were subject to regulations which were different on principle and to which I shall return in particular, the provisions of the service regulations which corresponded to international law, that is the Geneva Convention, were authoritative. The Wehrmacht High Command exercised supervision over the strict observance of these Army service regulations through an inspector for the prisoner of war system and after 1943 through a further inspectory board, the inspector general for the prisoner of war system.

As further inspectory bodies may be counted the representatives of the protecting powers and the International Red Cross, which no doubt submitted to the various governments reports on the results of their inspections of and visits to the camps, in accordance with the provisions of the Geneva Convention. No such reports have been submitted here by the prosecution; I shall come back to the charges brought in by the French prosecutor. The fact, however, that the British and the American Prosecutions, for example, have not submitted such reports may well permit the conclusion that the protecting powers did not determine serious violations with regard to the treatment of the prisoners of war in camps.

The treatment of prisoners of war, which during the first few years of the war did not lead to complaints of a serious nature with the western powers—I except individual cases like the Dieppe case—became increasingly difficult for the OKW from year to year, because political and economic considerations gained the strongest influence in this sector. The Reichsfuehrer-SS tried to get the prisoner of war system into his hands. The struggles for power which were caused by this from October 1944 on had the result, that Hitler turned over the prisoner of war system to him ostensibly because the Wehrmacht had shown itself too weak, and that it had let itself be influenced by considerations based on international law.

Another important factor was the constantly increasing influence caused by a rising labor shortage, which was exercised by the Mobilization of Labor and the armament sector on Hitler and which was exercised over him in the OKW.

The Party-Chancellery, the German Labor Front and the Ministry of Propaganda likewise were included in this actually purely military question. The OKW was engaged in a constant struggle with all these agencies, which for the most part had more influence on Hitler than the OKW.

All these circumstances must be taken into consideration, if one wishes to understand and value the involvement of the defendant Keitel correctly. Since he personally had to carry out the functions "by order of" since Hitler always kept the problem of the prisoner of war system under his personal control because of the previously described reasons, the defendant Keitel was almost never in a position to voice his own, i.e., military misgivings against instructions and orders.

Treatment of French prisoners of war

As the result of the agreement of Montoire, the key word for the French prisoners of war was "collaboration!" Their treatment moved in the direction outlined by it, which through discussions with Ambassador Scapini led to considerable improvements for them. In this connection I refer to the answers to the questionnaire given by Ambassador Scapini, who states among other things:

"It is correct that General Reinecke examined the questions at hand objectively and without hostility, and that he attempted to regulate them understandingly, when they depended on his authority alone. He maintained a different attitude when the pressure exercised on the OKW by the Labor Service and sometimes by the Party made itself felt."

The prisoners of war used for labor were scarcely guarded. French prisoners of war used in the country had almost complete freedom of movement. By virtue of the direct understanding with the Vichy Government, considerable mitigations existed to the rules of the Geneva Convention, after their repatriation by virtue of the armistice provisions had very considerably lowered the number of the original prisoners of war.

[The Tribunal suggested the elimination of the next five pages but Dr. Neite went on as follows so as to include the Sagan Case.—Ed.]

It touches us Germans to a particular extent, because the unrestrained and boundless ruthlessness of the orders and of the character of Hitler, who did not for a single instant let himself be influenced in his explosive decisions by the thought of the German Wehrmacht's honor, is shown here. The cross-examination of the defendant Keitel by the representative of the British prosecution has clarified in how far his name has become implicated in this shocking state of affairs. Although it has been clearly established by evidence that Keitel has neither heard nor transmitted Hitler's murderous order, or that he and the Wehrmacht are not associated with the execution of this order, finally that he opposed by all means in his power the transfer of the escaped officers to Himmler, and at least obtained that the officers who had been taken back to the camp were saved; he has, however, the distressing feeling of consciousness of guilt, not to have known what terrible blow German military prestige was bound to suffer throughout the world by such a measure.

In connection with the treatment of the Sagan case the French Prosecution laid before the defendant Keitel Document 1650–PS which deals with the treatment of escaped prisoners of war.

[At this point, Dr. Nelte announced that he would summarize the remainder of his prepared speech.—Ed.]

During his examination, Keitel made the following statement.

"This document 1650–PS, opens like a document which has been seized at a police station, with the words "The OKW has decreed the following."

Keitel says:

"I have certainly neither signed this order of the OKW nor seen it; there can be no doubt about that. I cannot explain it; I can only state a presumption as to how this order came about."

Then he mentions in his examination the various possibilities as to how such an order could have come to the office which issued the order. Then he refers to another document, 1544–PS, a document which contains all the orders and directives concerning escaped prisoners of war, but not that one order referring to the escaped officers and noncommissioned officers in question.

The witness Westhoff confirmed that the concept "Stufe roman III" and its meaning were unknown to him and to the office of the Supreme Command of the Armed Forces/Prisoner of war affairs; he also stated that, on entering office on 1 April 1944, he did not find an order of this nature, thus also no file notice.

It was absolutely unclear what was meant by that Bullet Decree. I believe evidence presented here has cleared that up, evidence by co-defendant Kaltenbrunner, who on his part had never spoken to the defendant Keitel about that matter.

We find that Kaltenbrunner said, "I had not heard of the Bullet Decree. It was an entirely new concept for me." Therefore, I asked what it meant. He answered that it was a Fuehrer Order; he did not know any more. I was not satisfied with this information, and on the same day I sent a teletype message to Himmler asking him to please permit my reading an order of the Fuehrer which was called Bullet Decree. A few days later, Mueller came to see me by order of Himmler and submitted to me a decree which, however did not originate from Hitler but from Himmler, and in which Himmler stated that he was passing on to me a verbal Fuehrer Order."

From this it is safe to assume that without speaking to Keitel and without the latter's knowledge, Hitler must really have given such an order to Himmler as it is stated in Document 1650–PS which was submitted here. For the subjective judgment of the facts of the implied crimes the elementary importance lies in the knowledge of them, not only for the conception of guilt, but also for the Prosecution's ultimate resolution, the concurrence, the toleration as well as the omitted counter action. The knowledge of facts comprises:

(1) The knowledge of the facts.

(2) The perception of the establishment of a goal.

(3) The perception of the methods.

(4) The conception and faculty for conception of the consequences.

During discussion of the question as to how far the defendant Keitel could have possibly drawn any conclusions from the textual knowledge of the National Socialist Party Program and from Hitler's book "Mein Kampf" I have already stated the reasons for which Keitel had no perception of a realization by force.

As confirmed by Grand Admiral Raeder, Keitel denied the knowledge of an intended war of aggression until the war against Poland broke out. This opinion is certainly a subjective truth, because of Keitel's honest disbelief in a war with Poland, not to talk of any intervention by France and England. This perception, shared by Keitel and other high-ranking officers, was based on the fact that the military potential was too insufficient to risk a war and possibly expect a victory; the more so as it would evidently develop into a war on two fronts. This belief was also supported by the Non-Aggression Pact with USSR of 23 August 1939.

However, that is not the core of the problem. The speeches by Hitler before the generals, beginning with the conference of 5 November 1937, in which Keitel did not take part, permit from time to time the clearer recognition that Hitler did not wish to attain his aims so or so, that is, if not through friendly negotiation, then through war, or in any case, through employment of the Wehrmacht as an agent of pressure. There can be no doubt about that. One may argue over whether the context of the speeches of Hitler, concerning which there are no official notes or records of minutes reproduce more or less the text of the conference correctly. But on what there can be no doubt about is that they permit Hitler's point of view to be clearly recognized.

Accordingly, one must differentiate whether one could believe that a definite plan would come to its execution or whether one had to win the recognition that the general intention for aggression existed. If this recognition did not exist, then this can only be explained by the fact that the generals did not take the question war or peace into their consideration from the basic attitude assumed. According to their point of view, this was a political question, for which they did not hold themselves competent, since, as has been said here, the bases for such a resolution were not known to them and, as the defendant Keitel has testified, the generals had to have confidence in the leadership of the State, that the latter would only undertake war for pressing reasons. This is the result of the traditional principle that the Wehrmacht is probably an instrument of politics, but may not participate in politics by itself. A principle which was taken over by Hitler in all its severity. The court may decide whether this is to be valued as an excuse. Keitel explained on the witness stand that he recognized the orders, directives, and instructions which had such terrible consequences, and that he drew them up and signed them, without allowing himself to be disconcerted by the possible consequences.

This testimony leaves three questions open:

1. The question of the methods in the execution of the orders.
2. The question of conception of the consequences which actually occurred.
3. The question of the dolus eventualis.

The defendant Keitel in his affidavit (Doc. Book II, No. 12) presented the influence of the SS Police Organizations on the conduct of the war and the involving of the Wehrmacht in the occurrences, for the complex of the so-called "ideological orders.". The record of evidence has shown that numerous Wehrmacht commanders applied such terrible orders partly not at all, partly in a milder form, on their own responsibility. The methods of the SS, which gave these orders their terrible effect, were strange and therefore unimaginable to the soldier Keitel, grown old in fixed concepts. According to his testimony, these effects also did not become known in their terrible extent.

The same holds true for the Fuehrer Decree "Nacht und Nebel." If he did not allow himself to be disconcerted by the "possible" results, as he forwarded these orders, the dolus eventualis in regard to the results taking place can still not be affirmed. It is much more to be assumed that if he had not been able to recognize the horrible effects, he could have accepted the consequence, in spite of the prohibition of requests for resignation, which would have freed him from the hard necessity of knowing and would not have pulled him into the whirlpool of events ever more from month to month.

There may be an hypothesis to this. The testimony, however, has furnished certain pertinent facts for the correctness of this. The five-time attempt to leave his position and the resolve to end his life, which was witnessed by Colonel General Jodl, give you the opportunity to attribute the sincere desires of Keitel.

If he did not succeed, then this lies in the circumstances which I have already presented, the unequivocal and, as Keitel says, unconditional duty of the soldier true to his military oath, to do his duty obediently to the bitter end.

This concept is false then, if it is accordingly so exaggerated, that it lead to crime. It must also be considered, however, that with a soldier, he is accustomed to measure by other standards in war. If all high officers, Field Marshal Paulus as well, represented the same point of view, one may thus not understand that perhaps, but no one will deny them the honesty of their convictions.

The defendant Keitel replied to the question which was put so often during this trial why he did not—

a. Refuse to obey, or

b. Revolt against Hitler

that these questions were not taken by him into consideration, even for an instant. According to his words and his behavior, he is an absolute soldier. Did he place the guilt on himself with this conduct?

It is entirely a general problem whether a general may or must commit high treason if he realizes that the execution of an order or of a measure violates the international law and/or the laws of humanity.

The solution of this problem presumes the reply to the previous question, which is the "authority" which "allows or orders" criminal high treason. This question appears to me of significance for the reason, because the legitimation is to be established who can allow or order the general to commit high treason, who can "bind and absolve."

As the present state power, which in this case was represented by the Chief of the State, identical with the Supreme Commander of the Wehrmacht, does not come into the question, the question is merely whether there is an authority which is above or outside of the individual State Authority, which could "bind or absolve."

Since the struggle for power between Pope and Emperor which dominated the middle ages has no longer an actual importance in the sense of constitutional law, this power can be impersonal and moral only; the highest command of the unwritten, eternal right is put by the German poet Schiller into these words: "The power of tyranny has a limit. * * *" It is only one of the so manifold poetical revelations of world literature, which expresses the deepest yearning for freedom by all peoples.

If there is an unwritten law which corresponds to the unquestionable conviction of all men, it is this that with due consideration for order in the state, there is a limit for the restriction of freedom. Should this be overstepped the state of war of national order against the international power of world conscience will result. It is important to establish that up till now there did not exist a statute of international law of this kind. It is understandable; for the relativity of the conception of freedom in various states and the anxiety of all states about their sovereignty stand in incompatible opposition against the recognition of an international authority.

The authority which "binds and absolves," which absolves us of guilt before God and the people, is the universal conscience which becomes alive in every individual. He must act accordingly. The defendant Keitel did not hear the warning voice of the universal conscience. The principles of his soldierly life were so deeply rooted, governed his thinking and actions so exclusively, that he was deaf against all considerations which would lead him away from the path of obedience and faithfulness, as he understood them. This is the really tragic role which the defendant Keitel played in this most terrible drama of all times.

2. FINAL PLEA by Wilhelm Keitel

I acknowledged my responsibility on the witness stand within the framework of my position. The substance and significance of this position was presented in the presentation of evidence and in the final plea of my defense counsel.

It is not my intention to minimize my part in what took place. In the interest of historical truth, however, it seems advisable to correct a few errors in the final speeches of the Prosecution.

The American Chief Prosecutor said in his final speech, and I quote: "Keitel, a weak, submissive tool, turned the Wehrmacht, the instrument of aggression, over to the Party." A "turning over" of the Wehrmacht to the Party by me cannot be reconciled with my functions, either up to 4 February 1938 or after that time, a period when Hitler made himself the immediate supreme commander of the Wehrmacht, and thus ruled the Party and the Wehrmacht absolutely. I do not recall that in the course of this trial a single piece of evidence was presented which could justify this grave contention of the Prosecution.

The presentation of evidence, however, has also shown that the contention "that Keitel led the Wehrmacht in the execution of its criminal intentions" is wrong. This contention is also in contradiction to the English-American trial brief, which says expressly that I had no authority to issue orders.

Consequently, the British Chief Prosecutor is also mistaken when he speaks of me as, and I quote, "a field marshal who issued orders to the Wehrmacht." And when he accuses me of having said that I "had no idea what practical results were intended," that is the quotation, I believe that this is something quite different from what I said on the witness stand, which was, and I quote the words I spoke on the witness stand: "But when an order was given, I acted according to my duty as I saw it, without permitting myself to be confused by the possible but not always foreseeable consequences".

Also, the contention that, and I quote, "Keitel and Jodl cannot deny the responsibility for the operations of the Einsatzkommandos, with which their own commanders cooperated closely and cordially", that contention cannot be reconciled with the result of the taking of evidence. The OKW was eliminated from the Soviet-Russian theater of war. There were no troop commanders under its orders.

The French Chief Prosecutor said in his final speech: "Is it necessary to recall the terrible words of the defendant Keitel that 'human life was worth less than nothing in the occupied territories' ". These terrible words are not my words. I did not think them up and did not make them the contents of any order. The consciousness that my name is connected with the transmission of this Fuehrer order weighs heavily enough upon me.

At another point M. Champetier de Ribes says, and I quote, "This order was executed—it concerned anti-Partisan activities—on the basis of instructions from the commander of the army group, who, in his turn, acted on more general instructions of the defendant Keitel".

Here again "instructions of Keitel" are mentioned, although the French indictment itself states that I, as chief of the OKW, could not give any direct orders to the branches of the Wehrmacht.

In the final speech of the Soviet-Russian Prosecutor, it says, and I quote, "Beginning with the documents on the executions of political persons, Keitel, this 'soldier', as he likes to call himself, lied shamelessly to the American Prosecution in the preliminary examination—disregarding his oath—by saying that this decree was in the nature of a reprisal and that political persons had been kept separate from the other prisoners of war at the request of the latter. He was exposed before the Court".

The document in question is 884–PS.

The accusation that I lied is unfounded. The Soviet-Russian Prosecution overlooked the fact that the transcript of my preliminary examination on this question was not the subject of the presentation of evidence before this Tribunal. Therefore, its use in the final speech of the prosecution should not have been allowed. I did not see the transcript of the preliminary interrogation and do not know the wording. If it is complete, it will clarify the error which arose because the document in question was not shown to me. In the examination by my defense counsel I presented the state of affairs correctly.

In the last stage of the trial, the Prosecution attempted once more to incriminate me severely by connecting my name with an order for the preparation of bacteriological warfare. A witness, the former Generalarzt Dr. Schreiber, had said in his report: "The chief of the OKW, Field Marshal Keitel, had issued the order to prepare bacteriological warfare against the Soviet Union." On the witness stand here this witness did speak of a "Fuehrer order." But this is not true either.

The introduction of the testimony of Colonel Buerker, which was approved by the Tribunal in all agreement with the Prosecution, indicates that in the fall of 1943 I, in Buerker's own words, sharply and categorically rejected the suggestion of the Army Medical Inspectorate and the Army Weapons Office to activate the bacteria experiments, saying that that was out of the question, that it was forbidden, and that is true. Colonel General Jodl as well can confirm that no order of the type alleged by the witness was ever issued, and, moreover, that Hitler prohibited bacteriological warfare, which was suggested by some authorities. Thus the assertion to the contrary of the witness Dr. Schreiber is proved to be untrue.

I claim to have told the truth in all things, even if they incriminated me; at least to have endeavored, in spite of the great extent of my field of activity, to contribute to the best of my knowledge to the clarification of the true state of affairs.

Thus, at the end of this trial, I want to present frankly the knowledge that I have today and my acknowledgement.

In the course of the trial my defense counsel presented to me two basic questions. The first was put to me months ago. It was, "In case of a victory, would you have refused a share in the success?"

I answered: "No, I should no doubt have been proud of it."

The second question was "How would you act if you were in the same position again once more?"

My answer: "Then I would choose death rather than to let myself be drawn into the meshes of such ruinous methods."

From these two answers of mine, the High Tribunal may see my viewpoint. I believed I erred, and I was not in a position to prevent what should have been prevented. That is my guilt.

It is tragic to have to realize that the best I had to give as a soldier, obedience and loyalty, was exploited for intentions which could not be recognized, and that I did not see the limit which is set even for a soldier's performance of his duty. That is my fate.

From the clear recognition of the causes, the ruinous methods, and the terrible consequences of this occurrence of war, may there arise for the German People hope for a new future in the community of nations.

VII. ERNST KALTENBRUNNER

1. FINAL ARGUMENT by Dr. Kurt Kauffmann, Defense Counsel

The present trial in the torrent of a revolution

May it please the Tribunal:

The present trial is world history, but world history full of revolutionary tensions. The ghosts which were called are stronger than the cry of the suffering peoples for justice and peace. Ever since deification of man and humiliation of God chaos as an inevitable consequence and punishment is afflicting mankind with wars, revolutions, famine and despair. If my country was culpable of the greatest guilt, then permanently, it does the greatest penance a people has ever done.

The means for restoring the so much longed-for prosperity are erroneous, because they are second-rate. And no one of my listeners is in a position to call me a liar, when I assert that the present trial does not begin at the end of a period of wrong, to make an end to it, but is being surrounded by the surge of the waves of a furious torrent, on the surface of which the wreckage of a civilization, guarded through the centuries, is floating hopelessly, and on whose deep demoniacal bottom the foes of the true God, of Christian religion and, therefore of any Justice, are lurking.

The European commonwealth of peoples, whereof my country has been the heart piece, is seriously ill. It suffers from the spirit of negation and from the humiliation of the dignity of human nature. Rousseau would curse his own maxims if he had lived to see the radical refutation of his theories in these years of the 20th century. The peoples had announced the "liberty" of the Great Revolution, but in the course of but 150 years they have in the name of the same liberty created a monster of cruel slavery and ungodliness, which was able to escape earthly justice, but not to elude the living God.

The Tribunal before history

This Tribunal conscious of its task and its mission will some day have to pass before the probing eye of history. I do not doubt that the selected judges are striving to serve justice as they see it. But will not this problem indeed be beyond solution? The American chief prosecutor stated that in his country important trials seldom begin before one or two years have elapsed. I do not need to throw light upon the deeper core of truth contained in this practice. Would it be possible for human beings, torn between love and hate, justice and revenge, to conduct a trial immediately after the greatest human catastrophe ever known and constantly driven by the statutory demand asking for time-saving, swift proceedings, in such a way that they are entitled to the thanks of mankind at a time when the waters of this second deluge will have receded into their former bed?

Would it not have been better if the above-mentioned distance between crime and atonement would have been adhered to in the course of the present proceedings?

Law can be shaped only when the court possesses inner liberty and independence of such nature as to feel subject to no other considerations than to conscience and to God himself.

Such an august activity had sunk into oblivion in my country, in the first place in the mind of the governing class of the nation, Hitler had humiliated law to the rank of a prostitute of purpose. But this Tribunal intends to furnish proof to the world that all profit for the people is based on law alone. And no other thought than unselfish justice could arouse more joy and hope within the heart of people of good will.

I am not criticizing—it would serve no purpose—the provisions of the Charter, but I am asking whether any justice on earth has and indeed could have been found, if Might acknowledged Reason so far as to grant the enemies a regular trial, but could not make up its mind to crown this tribute to Reason by appointing a truly international tribunal; 19 nations appear to have approved of the legal basis of the Charter—we do not know this, but Mr. Justice Jackson indicated it—it is far more difficult to apply the written law.

The American chief prosecutor has emphatically declared that he did not intend to hold the entire German nation guilty, but the records of this Tribunal, which History will someday scrutinize attentively, contain nevertheless many things which, to us Germans, appear to be false and therefore, embittering; they unfortunately also contain repeatedly explicit questions of the French prosecution, to what extent, for example, certain crimes against humanity both in and outside Germany have become known to the German people; indeed, the French prosecution has asked explicitly: "Could those atrocities remain, on the whole, unknown to the entire German nation, or have they come to its knowledge?" Those and similar questions are not suitable for solving such a difficult and tragic problem with even the slightest regard for the truth. To the extent that evil, which always grows and manifests itself organically, gets the upper hand among a nation, to that extent every individual who has reached the age of reason bears some guilt for the catastrophes of his country. But even this guilt, lying in the sphere of metaphysics, never could become a collective guilt of a nation, unless every individual also in this nation had incurred an individual guilt. But who would be entitled to establish such an individual guilt without examining thousands of individual circumstances?

The problem, however, becomes even more difficult should one try, and this is aimed at, to establish the so-called national guilt for any crimes actually committed against peace, humanity, etc., during the past years on the part of the omnipotent state in whatever possible form. One should bear in mind most carefully the condition of the Reich before 1933. This has been done sufficiently here and I do not speak about it. Hitler monopolized such deep-reaching concepts as the proverbial German diligence, homeliness, sense of family, willingness to make sacrifices, aristocracy of work and hundreds of other things. Millions believed it; millions did not. The best people did not abandon hope, that they would be able to avert the tragedy foreboded by them. They flung themselves into the stream of events, collected the virtuous ones and fought, visibly or invisibly, against the bad ones. Can a plain, uneducated man in the street be blamed for not being ready to deny Hitler offhand every credibility, as a man who knew how to pass as a seeker of truth, and who every time showed to peace lovers the highly extolled palm of peace? After the assumption of power large sectors of the German people could feel themselves at unison with many other peoples on earth. Therefore, it is not astonishing that gradually, with the approval or the tolerance of other countries, Hitler acquired the nimbus of a man, unique in the century. Only the German who lived during the past years in Germany and did not scour from abroad, as with a telescope, the German space, is finally authorized to give information concerning the historical facts of an almost impenetrable method of secrecy, the psychosis of fear and the actual impossibility of changing the regime, and herewith to comply with Ranke's demand to historians, to establish "how it came to pass".

[The Tribunal objected to this material as irrelevant and Defense Counsel proceeded to summarize it.—Ed.]

The Defense has been established by the Charter, and I deal with the question of how, in the face of such excesses, a Defense can still realize its task. I say further that in this trial, error and truth are mysteriously mixed, probably more so than they ever were in a great trial of law. To try to establish the truth makes the Defense Counsel an assistant of the Court, and justification exists for the Defense to doubt not only the credibility of the witnesses but also the documents. It justifies the Defense Counsel to state that such reports, although they may be admitted by the Charter in evidence, can only be accepted with serious objections, because none of the defendants or defendants' Counsel or neutral observers could have any information on the way they were brought about.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

These statements were made, certainly, within the framework of the law, but I believe also within the framework of power.

The people, or a large part of the people, in their aspiration for peace and happiness, elevate the representative of a terrible heresy to the position of their Fuehrer, I might say to a demigod; this Fuehrer abusing the faith of his followers in the grossest imaginable way; this people then in the bondage of a slave not being able to find the strength for a timely open resistance and tumbling into the huge abyss of annihilation of its entire racial, political, spiritual and economic existence. All of this, in the truest sense of the word, is tragic. Had the individual man in the street, the mother in the home, and her sons and daughters, been asked to choose between peace or war, never voluntarily would they have drawn the lot of war.

[The Tribunal suggested the omission of other material under this topic heading due to its irrelevancy.—Ed.]

Development of the history of intellectual pursuits in Europe

The rise of Hitler and his downfall, unique in its extent and consequences, may be viewed from, regardless what side: From the perspective of the historic spectacle of German history, or of the supposedly constrained course of economic forces; of the sociological separation of its people, of the racial and character conditionalities of the German; or of the mistakes which the other brothers and sisters of the family of nations, living in the same house, committed in the political sphere. All this does certainly round out the picture of the analysis but always it brings to light only partial knowledge and partial truth. The deepest and at the same time the most fatal reason for the phenomenon Hitler lies in the metaphysical domain. In the final result the second world war was unavoidable. Anyone, however, who looks at the world and its aspects only from the view point of economic problems may arrive at the belief that the war, the first as well as the second world war, could have been avoided through a reasonable distribution of the wealth of this earth. Regarded by itself alone, economic reasons are never able to change the face of the earth; therefore, the change of the standards of living of the German people, their deterioration, the demoralization of the national soul by the Treaty of Versailles, inflation, enormous unemployment, and others became rather the outward cause for Hitler. Still it is possible that catastrophes might be delayed by years or decades, if certain outward living conditions make the mutual relationship of the nations and people apparently happy. At no time, however, can a wrong idea be extinguished through economic disposition alone, and be deprived of its destructiveness for the individual and for the nations, unless the people overcome and replace these ideas by spiritually better ones. In the manner in which the name of God is used by the people and nations, says the famous Donoso Cortes, lies the solution of the most feared problem.

Here we have the explanation for the providential mission of the nations, of the races, for the great changes in history, for the rise and downfall of empires, for conquests and wars, for the different characteristics of the nations, for the physiognomies of the nations, yes, even for their changing fortunes.

Monsieur de Menthon has tried to analyze National Socialism intellectually. He spoke of the "sin against the spirit" from which all crimes originated, he called National Socialism a coarser Darwinism.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

I wish to say something here: Hitler was not a meteor, the fall of which was incalculable and unpredictable. He was the exponent of an ideology which was atheistic and materialistic, to the last degree.

There is every reason to reflect that although National Socialism is eliminated through the complete defeat of Germany and although the world is now free of the German threat, proclaimed by all nations, there has been no change for the better. No peace has filled our hearts, no rest has come to any corner of human existence.

It is true, the collapse of a powerful state with all its physical and spiritual forces will send out waves for a long time, as the sea is stirred into motion when a large stone is thrown into the calm water. But what happens at present in Europe and in the world is much more, indeed it is something quite different from the mere ebbing away of such an occurrence.

To continue the comparison the waves rise anew from the deep; they are fed by mysterious and constantly emerging forces. These are those restless ideas, aiming at the disaster of nations, of which I spoke and nothing could give me the lie when I maintain that everybody, victor and vanquished, is living in the middle of a crisis which disturbs the conscience of the individual and the nations as a monstrous, apparently inevitable nightmare and which, beyond the punishment of guilty individuals, causes us to look out for those means and ways which can spare humanity from an even greater catastrophe.

In his "Confessions of a Revolutionary", Proudhon, the clear-sighted socialist wrote the memorable words: "Every great political problem also always has within itself a theological one." He coined this phrase 100 years ago. It is most timely that the American General MacArthur, at the signing of the Japanese surrender agreement is said to have repeated these deep words in their essential meaning, by saying: "If we do not create a better and greater system death will be at our door. The problem is fundamentally speaking, a religious one."

The changes in religious values determine history. They are the strongest motive powers in the cultural process of humanity. Permit me to show you in a few, rather large strokes the intellectual and historical forbears of National Socialism.

Renaissance, Subjectivism, French Revolution, Liberalism, National Socialism

[The Tribunal stated that this entire topic was irrelevant and therefore Dr. Kauffmann made only the following statement.—Ed.]

The contents of this can be summarized in two or three sentences, and I merely beg you to take cognizance of it. I have pointed out that the causes in all these unfortunate movements were the spiritual attitude such as that of anthropocentric humanism as described by Jacques Maritain.

* * * * * * *

Is Kaltenbrunner guilty?

In the midst of this spiritual situation in general stands the figure of the defendant Dr. Kaltenbrunner. The fatherland was already bleeding from a thousand wounds of its sensitive soul and of its gigantic power. Is this man guilty? He has pleaded not guilty and yet guilty. Let us see which is the truth.

As I emphasized at the beginning Kaltenbrunner, until the year 1943, was, in comparison with the other defendants at this trial, a man who was hardly known in Germany, at any rate the one who had hardly any association with either the German public or the high officials of the regime. In those days when the military, economic, and political fate of the German people had begun to roll with crazy velocity towards the abyss, hate and abhorrence of the executive were at their climax, the more so, as the paralyzing sensation of the hopelessness of any resistance against the terror of the regime had disappeared; people had then definitely turned away from the legend of invincibility preached by propaganda. Suddenly, so to speak, and without the existence of any special ability nor of any application, Kaltenbrunner was drawn into the net of the greatest accomplice of the greatest murderer, from his secluded, and, notwithstanding the Austrian Anschluss, from the viewpoint of international criminal law, untainted life. Not voluntarily, on the contrary, against his repeated resistance, and against his exertions to be ordered to the fighting front.

I can well understand that I will be answered, that I should in view of the sea of blood and tears, refrain from illuminating the physiognomy of this man's soul and character. But deep in my heart—and I beg not to be misunderstood—I am, while exercising my profession as a counsel, even of such a man, moved by the universal thesis of the great Augustine hardly intelligible for the present godless generation: "Hate error, but love man." Love? Indeed, in so far as it should pervade justice; because justice without this nobility of love becomes plain revenge, which the prosecution explicitly contends to disavow. Therefore, for the sake of this justice, I am to show you that Kaltenbrunner is not the type as repeatedly described by the prosecution, namely the "little Hitler", his "confidant", the "second Heydrich."

I do not believe that he is the ice cold being as the witness Dr. Gisevius has made him out to be here in such an altogether negative manner, in fact, from hearsay only. The defendant Jodl has testified before you that Kaltenbrunner did not belong to Hitler's confidants who always got together with him after the daily situation conferences in the Fuehrer headquarters. And the witness Dr. Mildner has stated on the basis of direct observation, without his testimony having been doubted by the prosecution:

"From my own observation I can confirm: I know the defendant Kaltenbrunner personally. In his private life he was an irreproachable man. In my opinion he was promoted from Higher SS and Police Chief to Chief of the Security Police and of the SD, because Himmler, after the death of his principal rival Heydrich in June 1942, did not want any man anymore or did not tolerate anybody under him who could have endangered him in his position. The defendant Kaltenbrunner was no doubt the least dangerous man for Himmler. Kaltenbrunner was not ambitious to bring his influence to bear through special deeds and to push finally Himmler aside. He was not hungry for power. It is wrong to call him the "little Himmler". The witnesses Eberstein, Waldeck, and Dr. Hoettl have expressed themselves in the same manner.

And yet this man took over the office of the Reichssicherheitshauptamt, yes, he did indeed take it over to the fullest extent. I know that today this man suffers a great deal under the catastrophe of his people and under the uneasiness of his conscience; nothing is more understandable then that Dr. Kaltenbrunner, knowingly or unknowingly, can no longer face the fact that he actually was in charge of an agency under the burden of which rocks would talk if that could have been possible; personality and character of this man will have to be judged differently from the way the prosecution has been doing this.

For the psychologist the question arises how a man, let us say, with normal civil virtues, could take an office under his control, which became the very sum total of human slavery of the 20th century, as far as Germany is concerned. There may be two reasons for taking over this office nevertheless: One is based on the fact that Dr. Kaltenbrunner, although closely connected with the political and cultural interests of his Austrian homeland, supported National Socialism in its large scope. Because before he turned into the sidepath with his secrets, he marched with thousands and hundreds of thousands of other Germans, who desired nothing else than a solution from the unstable conditions prevailing at that time, on that wide road into which the eye of the entire world had insight. Therefore, he was, without a doubt a follower of anti-semitism, however, only in the sense of the necessity for retrograding the flooding of the German race with alien elements, he condemned just as harshly the mad crimes of physical annihilation of the Jewish race, as Dr. Hoettl definitely stated. Kaltenbrunner surely affirmed also Hitler's personality as far as it did not, by and by become apparent in its absolutely misanthropic and thereby un-German nature. Also fundamentally he approved, as he himself admitted during his interrogation, measures which implied, more or less severe compulsion, as for example, the organization of labor education camps. Therefore, no sensible person will want to question the fact that he deemed the establishment of concentration camps quite proper, at least a provisional measure especially during the war as this had been the case for a long time on the other side of the German border. The establishment of concentration camps, or however one wishes to call those places, at mentioning of which the listener involuntarily is reminded of words by Dante, is unfortunately not unknown to many states. History knows of them from South Africa for some decades, from Russia, England and America during this war, for the admission among others, of persons who for reasons of conscience do not want to serve with arms. In Bavaria, in the land in which the Tribunal presently sits, these sort of camps are also known; known is also the so-called "automatic" arrest for certain groups of Germans. Under the heading: "Political Fundamentals" in item B 5 of the text of mutual declaration of the three leading statesmen about the Potsdam Conference of 17 July 1945, the statement is contained that, among others, all persons who are dangerous for the occupation or its aims shall be arrested or interned.

The necessity of camps of this sort is thereby recognized. I myself hate the organization of human slavery, but I state openly, that these institutions lie on the way which when followed to the end can and will bring suffering to persons of a different opinion, than desired by the state. By this the crimes in the German concentration camps shall not in the least be diminished. As far as Kaltenbrunner is concerned this man, according to my conviction and as far as it can be affirmed by many witnesses, is in his character and his attitude, apparent since 1943, basically a National Socialist leading personality who only with disgust took notice of the general trend of the continually growing wave of terror and enslavement in Germany.

For this reason I deem it important to point to the statement of the witness Eigruber, according to which the statement of the prosecution is wrong, that Kaltenbrunner established Mauthausen (Doc. Kr. 6, question 1 and 2).

The second motive lies in the subject of the two conversations with Himmler, about which he testified. Thereby Kaltenbrunner was but prepared to take over the agencies of the domestic and foreign intelligence service within the Reichssicherheitshauptamt, resting on Himmler's promise that he would be allowed to centralize this intelligence service, namely in the direction of absorbing and connecting the political intelligence service with the hitherto military one of Admiral Canaris. The witnesses Waldeck, Dr. Hoettl, Dr. Mildner, and Ohlendorf and also the defendant himself are indubitably correct in testifying that Himmler, making allowance for Kaltenbrunner's wishes, from the murder of Heydrich, interpolated himself into the executive body, so that nothing of some importance took place in any executive field in Germany without Himmler having had the final word and thus issuing the decisive order.

The witness Waldeck confirmed to the subject of those two conversations of Kaltenbrunner with Himmler in the following words, which I shall quote because of their importance: "When material problems arose Kaltenbrunner frequently remarked that he had come to an understanding with Himmler to work rather in the field of the foreign political intelligence service and that Himmler himself wanted to take more influence in the executive functions. To my knowledge Himmler agreed to these adjustments, the more so as he believed that he could depend on Kaltenbrunner's political instinct in foreign affairs, this would follow from various remarks made by Himmler."

Various witnesses testified that Kaltenbrunner predominantly and from inner necessity actually made himself over to the intelligence service in domestic and foreign countries and more and more approached an influence on domestic and foreign politics he was hoping for. I am calling attention to Waldeck, Dr. Hoettl, but then also to the defendants Jodl and Seyss-Inquart and Fritzsche. Dr. Hoettl testified: "In my opinion Kaltenbrunner never completely mastered the large agency of the Reichssicherheitshauptamt and, from lack of interest for police and executive problems, occupied himself far more with the intelligence service and with the influence on the entire policy. This he considered his real domain." From the testimony by Generaloberst Jodl I am stressing the following sentences: "Before Kaltenbrunner took over the intelligence service from Canaris he sent to me, from time to time, very good reports from the Southeastern territory, whereby I first noticed his experience in the intelligence service. . . . I had the impression, this man knows his business; I now received continuous reports from Kaltenbrunner, the same as before from Canaris; not only the actual reports from agents but from time to time he sent to me a, I almost want to say, political survey on the basis of his individual reports from agents. I noticed especially these condensed reports on the entire political situation abroad because they revealed, as never before under Canaris, a frank sobriety, and the seriousness of our entire military position."

On the basis of the evidence I am therefore arriving, without any constraint, at the following result: Kaltenbrunner on the basis of the separation of the intelligence service from the executive police functions desired by him actually held a position in the Reichssicherheitshauptamt which was principally aimed at the intelligence service and its continuous development. This was the lifework of this man as he himself wished it to be for the duration of the war. Personally he lived in small economic circumstances and it is the truth when I say, that he steps off the stage of political life just as poor as he ascended it. The witness Waneck once made the statement, characteristic for Kaltenbrunner, that he, Kaltenbrunner, will retire completely from office after the war and return to the land as a peasant.

Only with deep regret the spectator will state that under the pressure of the political and military events this man did not observe the border-line, as desired by himself. His obedience toward Hitler and therefore also toward Himmler had submitted to the apparent necessity in the years 1943/45, to guarantee the stability of the inner-German relations through police compulsion. Thereby he became involved in guilt; it is clear, that he can count on a milder judgment of his guilt before the world conscience only if he could have produced evidence that he actually undertook a strict separation from section (Amt) IV of the Secret State Police rightly called demoniacal, if he had in no way participated in the ideas and methods which, as I believe, eventually led to the institution of this trial. I cannot deny that he did not undertake this separation. Nothing is clearly proven in this direction, even his own testimony speaks against him. Thus his statement before the Tribunal at the beginning of his interrogation may be explained, which I should like to define this as the thesis of his guilt.

Question: "Do you realize that very special accusations have been brought against you? The prosecution accuses you of crimes against the peace as well as of your role of an intellectual principal or of a participator in committing crimes against humanity and against the laws of war. Finally the prosecution has connected your name with the terrorism of the Gestapo and with the cruelties in the concentration camps? I now ask you: Do you assume the responsibility for these points of accusation in such manner as they are outlined and familiar to you?"

Answer: "First of all I should like to state to the court that I am fully aware of the serious nature of the accusations brought against me. I know that the hatred of the world is directed against me, since I am the only one here, because a Himmler, a Mueller, a Pohl are no longer alive, to answer to the world and to the court. . . . I want to state at the very beginning, that from the time of my appointment as chief of the Central Reich Security Office (Reichssicherheitshauptamt) I assume the responsibility for every wrong committed within the jurisdiction of this agency as far as it occurred under my actual command, and I thus knew or should have known of these occurrences."

Thus the duty of the defense is automatically divided by asking the questions:

1. What did Kaltenbrunner do, good and evil, from his appointment as chief of the Reichssicherheitshauptamt on 1 February 1943 on?

2. To what extent can it justly be said that in the essential points he did not possess sufficient knowledge about all the crimes against humanity and against the laws of war?

3. In how far can his guilt be established from the viewpoint that he should have known about the serious crimes against international law in which Section (Amt) IV of the Reichssicherheitshauptamt (Secret State Police) was directly or indirectly involved?

1. What has Kaltenbrunner done? In this connection I am passing over the accusation brought against him by the prosecution, for his participation in the events of the occupation of Austria and Czechoslovakia; no matter with what energy he followed his goal to see his Austrian homeland incorporated into the German Reich, and to the end of this realization use the SS forces under his command: this aim can not have been a criminal one according to the world-conscience. Just as little could one, because of the forcible means at that time employed to accomplish the annexation of Austria which was historically due and desired by millions, reach a verdict of guilt. Kaltenbrunner was still much too insignificant a man for that. Economic distress, Anschluss movement, National Socialism: This was the way of the majority of the Austrian people, not the National-Socialist ideology; for Hitler himself was from the standpoint of Austrianism a spiritual and political renegade. Yet the Austrian Anschluss movement was a people's movement before National Socialism had reached any importance in Germany. Austria wanted to protest against the Versailles and St. Germain ruling which forbade the Anschluss, by holding a plebiscite in each "Land". After 90 percent had voted in Tyrol and Salzburg, the victorious powers threatened to discontinue the shipment of food supplies. Hitler's seizure of power paralyzed the desire for Anchluss among those not of the party, but the distress in Austria became still more acute and isolated the Dollfuss-Schuschnigg regime. The incorporation into the Greater-German sphere of economics, where the removal of mass unemployment seemed to be the source of hope, appeared to the greatly distressed Austrian people as the only way out. The wave of enthusiasm which on 10 October 1938 went through all of Austria was real. To want to deny this today would be to falsify history. The Anschluss, and not the Dollfuss-Schuschnigg government, was based on democracy. Just as little can one, I believe, according to the reasons mentioned above, reach a verdict of guilty for Kaltenbrunner because of his alleged activity in the question of Czechoslovakia. In my opinion the question of guilt and expiation becomes acute only for the time after 1 February 1943. The indignation of the German people over one of the most infamous terroristic measures, the taking into protective custody, had already before this date become immense. Is it correct to say that Kaltenbrunner himself, of whom many orders for protective custody bearing his signature are in evidence before the court, inwardly abhorred this type of suppression of human liberties?

May I refer to just a few sentences from his interrogations?

Question: "Did you know that protective custody was at all permissible and was used frequently?"

Answer: "As I have related, I discussed the idea of 'Protective Custody' with Himmler, already in 1942. But I believe, already before this time to have corresponded quite extensively on this subject with him as well as once also with Thierack. I consider protective custody as applied in Germany only in a smaller number of cases a necessity of state, or better said as a measure such as is justified by war. For the rest I often, and well founded, according to the history of law voiced my opinion and turned against this conception and against the application of any protective custody in principle. I had several discussions about it with Himmler and with Hitler also. I had publicly taken my stand against it at a meeting of prosecutors, in 1944 I believe, because I have always been of the opinion that a man's freedom is one of his highest possessions, and only the lawful sentence of a regular court of justice, rooted in the constitution may limit or take away this freedom."

Here the same man expresses the right principles. The observance of which would have spared the German people and the world from untold suffering, and the nonobservance of which constitutes the guilt of this man who in spite of his right perception suited his actions to the so-called necessity of the State. He thereby, against his own will and knowledge, became subject to the principle of hatred, which sooner or later will always shake or shatter the foundations of the strongest state. "Right is what benefits the people," Hitler had proclaimed. I well believe that Kaltenbrunner today deeply regrets to have adhered too long to this maxim.

Although the prosecution has not been able to produce even one single original signature of Kaltenbrunner in connection with order for protective custody and I do not think it incredible when Kaltenbrunner deposes, that never did he himself put into effect such an order for protective custody by his signature; nevertheless in view of the tragical results due to so many of these orders I do not need to say even one word as to whether he is entirely blameless or is much less to blame because these orders had perhaps been signed without his knowledge; then of course the question arises immediately how such an occurrence could be possible in, it is true, an extraordinarily large office. Be that as it may: In affairs of such depth and such tragic outcome one does not feel inclined to make any difference between knowledge and ignorance due to negligence because one wants to hold everyone occupying a post in an office responsible for what happens there. This recognition is also the meaning of Kaltenbrunner's statement regarding his fundamental responsibility as cited above. Where the happiness and fate of living men are involved it is impossible to retreat under the pretext of ignorance in order to avoid punishment, at best for the purpose of mitigation of sentence. The defendant knows this too. Orders for protective custody were the ominous harbingers of the concentration camps. And I am not giving out a secret when I say that the responsibility for issuing orders for protective custody includes already the beginning of responsibility for the fate of those held in the concentration camps. I could never admit that Dr. Kaltenbrunner may have known of the excesses of suffering of the thousands who languished in the camps; for, as soon as the gates of the concentration camps were closed there began the exclusive influence of that other office, the frequently mentioned central for economy and administration (Wirtschafts- und Verwaltungshauptamt). Instead of referring to many statements of witnesses to this point I refer to the one of the witness Dr. Hoettl who, when asked about subordination in rank, replied: "The concentration camps were exclusively under the command of the SS-Central office for economy and administration, hence not under the central Reich-Security Main Office and therefore not under Kaltenbrunner. In this sphere he had no authority of command and no competency." Other witnesses have said that of necessity Kaltenbrunner should have had knowledge of the sad conditions in the concentration camps, but there is no doubt that the commanders of the concentration camps themselves deliberately concealed penal excesses of the guards from their superiors. It is furthermore a fact, that the conditions found by the Allies upon their arrival were almost exclusively the results of the catastrophic military and economic situation during the last weeks of the war and which the world mistakenly took for general conditions of former times. The above statement is fully verified by the statements of the camp commander of Auschwitz, Hoess, who, because of his later activity in the system of concentration camps of the central office for economy and administration, had made an accurate survey. For Hoess there exists no inward reason whatsoever to give a false testimony. A person like him, who has sent millions of men to their deaths, comes no longer under the authority of human judges and considerations. Hoess stated: "The so-called mistreatment and tortures in the concentration camps * * * were not, as assumed, a method. They were rather excesses of individual leaders, sub-leaders and men who laid violent hands upon the inmates." These elements themselves were, according to the statement of Hoess, taken to task for that. I believe I need not go into anymore details of how, according to various witnesses, visitors of the concentration camps were impressed and surprised by the good conditions, cleanliness and order in the camps and therefore no suspicion was aroused as to special sufferings of the inmates. But it would be worse than bad taste if I contested the fact, that a chief of the intelligence service, if only on the basis of foreign news of atrocities, should not have felt the responsibility in the interest of humanity to clear up any doubts arising along that line. This seems to be confirmed by the statement of Dr. Meyer of the International Red Cross (Doc. Kr. 4, Question 7), for the permission to have the International Red Cross visit the Jewish Camp at Theresienstadt and to allow food and medical supplies to be sent in, seems to be proof of the bad conditions in the camps during the last months of the war; nobody would allow neutral or foreign observers to have insight into the camps if it had been known that crimes against humanity occurred regularly in the camps, as is asserted by the prosecution. In any case I do not come to the result that Kaltenbrunner had full knowledge of the "conditions" in the concentration camps, but that it was his duty to investigate into the fate of those who were imprisoned. Kaltenbrunner might have found out then, that a considerable number of the inmates was sent to the camps because they were criminals, a much smaller portion was there because of their political or ideological viewpoints or because of their race etc; but that he would have found out about those primitive offenses against humanity, about those excesses and all the distress of these people, I do contest in agreement with Kaltenbrunner.

The way to arrive at the truth was immensely complicated in Germany, and even the chief of the Reichssicherheitshauptamt found nearly unconquerable obstacles in the hierarchy of jurisdiction and authority of other offices and persons. The improvement of the sad lot of the internees was from 1943 a problem which could have been solved only through the dissolution of such camps. A Germany of the last 12 years without any concentration camps would, indeed, have been an utopia. On the whole, Kaltenbrunner was but a small wheel of this machinery. In the preceding, paragraph, I spoke about the subject of the orders for protective custody and of their effect.

Dr. Kaltenbrunner has affirmed the necessity for work education camps, owing to, as stated by him during his examination, the conditions then prevailing in the Reich, to the shortcomings of the labor market, and to other reasons. And, if I am not mistaken, no convincing proof was submitted of mistreatment and cruelties in such camps. The reason may well lie in the fact that these camps were in some respects only related to, but not on equal footing with concentration camps. With all available means of evidence, Kaltenbrunner has opposed the accusation of having covered orders of execution with his signature. The witnesses Hoess and Zutter state that they saw such orders in isolated cases. The prosecution, however, does not seem to have proved that any such orders were issued without judicial sentence or without reasons justifying the death, with the exception, though, of a particularly serious case reported from hearsay by the witness Zutter, adjutant of the camp commander of Mauthausen. Thereby, a teletype signed by Kaltenbrunner is said to have authorized, in the spring of 1945, the execution of parachutists. An original signature by Kaltenbrunner is entirely lacking. I think I may assert that he did not sign any such orders concerning life and death, because he was not authorized to do so. Dr. Hoettl as a witness stated: "No, Kaltenbrunner did not issue such orders and could not in my opinion give such orders (for killing Jews) on his own accord." And Waneck explicitly confirmed as follows: "It is known to me that Himmler personally decided over life and death and other punishment of inmates of concentration camps."

Thus the exclusive authority of Himmler in this sad field may be considered proved.

It would however be presumptuous if I were to deny the guilt of Kaltenbrunner completely on this point. If such orders were executed on members of foreign powers, for example an order based on the so-called "Commando-Order" of Hitler of 18 October 1942, then there arises the question of the responsibility of that person, whose signature was affixed to these orders, because the misuse of his name by subalterns was possible. It is certain that Kaltenbrunner had exerted not the least influence in originating the "Commando-Order." It can, however, hardly be doubted that this decree in itself constituted a violation of international law. The development of the second World War into a total war by necessity created an abundance of new stratagems. Even where bona fide soldiers were employed in their execution a motive of bitterness, humanly quite understandable, over the perhaps gangsterlike conduct of command troops concerned and other things could not justify the order. Fortunately but very few people fell victim to this order of Hitler. Perhaps one would ask me, whether it is my duty or whether I am only permitted to reiterate such points of incrimination as I have just done, since this seems to be the task of the prosecution. To this I reply: If the defense is so liberal as to admit the negative side of a personality, it surely is apt to be heard more readily when it approaches the Tribunal with the request to appraise the positive side in its full significance.

However, is there a positive side at all in the present case? I believe, I may answer in the affirmative. I already pointed out several facts, which are connected with the time of the assumption of office by Kaltenbrunner. During the short time of 2 years of activity, this man has made himself a bearer of happy and humane ideas. I wish to remind of his attitude toward the lynch-order of Hitler with respect to downed enemy aviators. The witness, General of the Air Force, Koller portrayed the decent conduct of Kaltenbrunner which led to a total sabotage of this order. After first describing the contents of Hitler's order and Hitler's threat then pronounced during the discussion of the situation, namely that all and any saboteurs of this order shall be shot dead, Koller continues to repeat the assertions of Kaltenbrunner.

Permit me to quote a few sentences of the statements of Koller. "Kaltenbrunner said: The tasks of the S.D. are continuously given a wrong interpretation. Such matters are not the concern of the S.D. Moreover, no German soldier will do what the Fuehrer demands. He does not kill prisoners and if a few fanatic partisans of Mr. Bormann try to do so, the German soldier will interfere. * * * Futhermore, I myself will do nothing in this matter. * * *" Koller and Kaltenbrunner, in other words, were fully agreed on that matter. This positive action of Kaltenbrunner, important for the judgment of the actual nature of his personality, does not stand alone. Witness Dr. Hoettl confirmed the fact, that in questions of the future fate of Germany, Kaltenbrunner went if not beyond so at least up to the borderline of high treason. This witness for example confirms that Kaltenbrunner in March 1944 caused Hitler to moderate the Plans concerning the Hungarian question, and that he succeeded in preventing the entry of Rumanian units into Hungary. It was by the exertion of his influence that the planned regime by an Hungarian National Socialist Government did not materialize for some time.

Dr. Hoettl then says literally: "Since 1943, I advocated towards Kaltenbrunner, that Germany must attempt at all cost to end the war. I informed him of my connections with an American authority in Lisbon. I also informed him, that by way of the Austrian resistance movement I had taken up new contacts with an American authority abroad. He declared to be prepared to go to Switzerland with me and there to take up personally negotiations with the American representative, in order to prevent further useless bloodshed."

The depositions of witness Dr. Neubacher run along the same lines. This witness testified to an important positive human action of Kaltenbrunner. Upon the question whether Kaltenbrunner had assisted the witness in moderating as much as possible terror policies in Serbia, Dr. Neubacher answered, and I quote, "Yes, in this field I owe much to the assistance of Kaltenbrunner. The German police agencies in Serbia knew of me and of Kaltenbrunner that he, in his capacity as Chief of the foreign intelligence service (Auslandsnachrichtendienst), uncompromisingly assisted my policies in the southeastern territory. Thereby my ability to influence the police office was accomplished. Kaltenbrunner's assistance was of value in my aspirations to overthrow the then prevailing system of collective responsibility and repression with the aid of judicious officers."

I am further mentioning the relief work of the Geneva Red Cross, which is due to the initiative of Kaltenbrunner. The activity of the defendant with respect to this, was portrayed by the witness Prof. Burckhardt, Dr. Bachmann and Dr. Meyer. As a consequence many thousands were able to exchange their captivity for liberty. I should like to point your attention to a few words, submitted by the defendant Seyss-Inquart on two points. He mentioned that Kaltenbrunner worked for a complete autonomy of the Polish state as well as for the reintroduction of the independence of both Christian Churches.

Kaltenbrunner tried to realize his human intentions not only in this field. Therefore it seems to me to be of significance, to point out his efforts to make Austrian Gauleiters understand, that any resistance against troops of the Western powers would be senseless and that in view of this, irresponsible orders for resistance were not to be issued. This was confirmed by the witness Waldeck. The prosecution held Kaltenbrunner responsible for the evacuation and planned destruction of certain concentration camps. I believe this proof may not only be considered as unsuccessful, but rather as a proof for the contrary. Upon the question addressed to Dr. Hoettl, whether Kaltenbrunner had instructed the Commandant of the concentration camp Mauthausen to surrender the camp to the advancing troops, Dr. Hoettl answered: "It is correct, that Kaltenbrunner issued such an order. He dictated it in my presence for transmission to the Camp Commandant."

As a supplement, Kaltenbrunner during his personal examination, declared very logically:

Even if, according to his orders, the camp Mauthausen, filled with professional criminals, was not to be evacuated, an order to evacuate Dachau was devoid of any basis by reason of its, compared with Mauthausen, harmless inmates. According to the testimony of Freiherr von Eberstein, the destruction of the concentration camp Dachau with its two secondary camps was the wish dream of the then Gauleiter of Munich, Giessler.

Finally the witness Waldeck confirmed the fact that such an order of Kaltenbrunner had not become known to him; that, however, due to his position with Kaltenbrunner he would have known it, had such an order been issued by the latter or even if the issuance of such an order had been taken into consideration.

Who actually issued these orders, can no longer be established with certainty. The witness Hoess in his examination, mentioned an order of evacuation by Himmler as well as directly by Hitler. In this connection it seems appropriate to me to point to Kaltenbrunner's participation in the sad case of Sagan as charged by the prosecution. With reference to Kaltenbrunner's statement, confirmed by the examination of the witness Wielen, it appears to me to be a proven fact, that this matter came for the first time before Kaltenbrunner only several weeks later, after the conclusion of this tragedy.

It also appears to me doubtful whether the so-called task units (Einsatzgruppen), deployed upon the basis of Hitler's "Commissar Order" of 1941, were still in existence and functioning after the appointment of Kaltenbrunner. Some facts speak for it, others against it. Kaltenbrunner denied the existence of these groups for the period of his office as Chief of the Reichssicherheitshauptamt. I do not want to lose myself in details but I should like to point the attention of the Tribunal to these doubts. The same applies, for example, to the bullet decree (Kugelerlass). Document 1650–PS, USA 246, confirms that it was not Kaltenbrunner but Mueller, the Chief of Amt IV who signed the instructions involved, while document 3844–PS, USA 801, deals with personal signatures of the defendant. It appears to me, that the first document deserves preference. May I draw your attention to such documents, which are rather inconclusive, insofar as they are based upon indirect observation.

I trust that the Tribunal possesses sufficient experience in evaluating evidence so that I do not have to argue about this any further.

I have thus far voluntarily conceded the negative in order to be the more justified in emphasizing the positive in Kaltenbrunner's personality. In how far, however, will I be justified in stating that Kaltenbrunner had actually insufficient knowledge of many war crimes and crimes against humanity which in the course of the last 2 years of war were committed with some kind of participation of the Section IV (Gestapo)?

Would such a defense offer the prospect of essentially exculpating the Chief of the Reichssicherheitshauptamt? Kaltenbrunner admitted during his examination that he received knowledge of orders, instructions and directives—unmindful of their originating long before, in some instances even several years before his assumption of office—only very late, sometimes as late as 1944 or 1945.

I will not at this moment try to prove in detail these statements of Kaltenbrunner's. The prosecution is out to find exclusively whether such orders, decrees, directives, etc. were also executed during the period of time in which the defendant was in office as head of the Reich Security Main Office (Reichssicherheitshauptamt). It is also often very difficult for the defense counsel to follow up the secret channels of knowing or not knowing of a defendant. Perhaps the defense counsel lacks sometimes the necessary distance for a free judging in view of the hecatombes of victims spread out across a whole continent and he is unjust.

At his interrogation at court, Kaltenbrunner once explained the difficult position he was in when he took over his office on 1 February 1943 and I hope that nobody will misjudge this situation. The Reich was still fighting and even in 1943 still dangerous for any adversary colliding with it. But it was already clear that it was a fight for a goal in the infinitely far away and out of reach. Who tries to hold back the spokes of the wheels of a carriage rolling into an abyss at top speed will perish. Coupled with these conditions from which there was no way of escaping, there was an officiousness uncreative and caused by nervous insecurity in all areas of private and public life. Kaltenbrunner said with regard to this situation: "I beg you to put yourself into my situation. I came to Berlin in the beginning of February 1943. I began my work in May 1943 except for a few visits of introduction. In the fourth year of the war the orders and decrees of the Reich had piled up also in the executive sector already to many thousands on the table and in the filing cabinets of the civil service. It was impossible for a human being to read all that through even in the course of a year. Even if I had felt it to be my duty I could never possibly have made myself acquainted with all these orders."

In connection with this I remind you respectfully that according to the evidence given by the witness Dr. Hoettl and others the Reich Security Main Office in Berlin had 3000 employees of all categories when Kaltenbrunner was in office and that according to the statement of the same witness, Kaltenbrunner never dominated this office completely.

Nobody will be able to deny justification of the question, whether it was Kaltenbrunner's duty to have himself informed in the shortest possible time about the most essential proceedings, at least, in all the offices of the main office for Reich Security and whether he would not then very soon, after all, have obtained knowledge of, for example, Himmler's and Eichmann's Jewish operation and many other serious terrorist measures. I may remind you that Kaltenbrunner in answering my questions declared repeatedly and emphatically before this Tribunal that he protested regularly every time he heard of such occurrences, addressing himself to Himmler and even Hitler, but that he had but little success and that only after a long while. The defendant, for example, traces back the stopping of the extermination of Jews by an order of Hitler in October 1944 to his personal initiative. However difficult it may be to judge whether the power and influence of a single man would have been sufficient to bring about the suspension of a program of extermination already in its final phase, I believe I may say without being incorrect that many tens of thousands of Jews owe it to this man that they escaped the hell of Auschwitz and still see the light of the sun. From the statements of Messrs. Dr. Brachmann and Dr. Meyer of the International Red Cross (Doc. Kr. 4 and 5. Question 4) it appears that Kaltenbrunner asked the International Red Cross to organize relief shipments to a large political camp at Unskirchen near Wels.

Witness Wanek has characterized Kaltenbrunner's attitude toward the question of Himmler's Jewish policy as follows. He says: In the daily haste of our joint foreign-political labors and discussions we did not touch on the problem of the Jewish policy any more. At the time Kaltenbrunner came into office this question was already so far advanced that Kaltenbrunner could not have had any more influence on it. If Kaltenbrunner expressed himself at all on the subject, it was to the effect that mistakes had been made here that could never be made good. This witness then finally confirms that this operation was conducted independently of this enterprise, owing to, and through the direct channel of command of Himmler-Eichmann and says that the position of Eichmann which already had been a dominating one when Heydrich was still alive, had increased steadily, so that eventually he would have acted completely independently in the entire Jewish sphere (Doc. 8, Question 7).

Prof. Burckhardt states that Kaltenbrunner, when discussing the Jewish question, declared: "It is the greatest nonsense, all the Jews should be released, that is my personal opinion." (Doc. 3, Question 18).

But in spite of all this, the fundamental question is raised for the problem of guilt: May a high official and the director of an influential office, whose subordinates in a far reaching hierarchy continuously commit crimes against humanity and against the rules of international law, assume such an office at all or remain in such an office, although he condemns these crimes. But is it perhaps a different case, if this man has the intention of doing all that is humanly possible to break the chain of crimes and thereby finally to become a benefactor of humanity? The last question is in my opinion to be answered in the affirmative. It is to be appraised solely from the standpoint of the highest ethic principle:

My further thought in this connection is the following: he who invokes his philanthropic intention is free of guilt if from the first day of his taking over such an office he refuses all active participation in the direct commission of injustice and even going beyond this, however, uses every conceivable possibility, nay seeks it out, so as to achieve the elimination of unjust orders and their execution through his never ending resistance and every kind of human cunning.

The defendant himself has also sensed and clearly recognized all these things. On account of the importance of the question I should like to refer to his interrogation:

Question: "I ask you whether there was a possibility that you might have brought about a change after having gradually learned the conditions in the Secret State Police and in the concentration camps, etc. If this possibility existed, will you then say that an alleviation i.e. an improvement, was brought about in the conditions in these fields due to your remaining in office?"

Answer: "I repeatedly applied for service at the front. But the most burning question which I had to decide for myself was whether the conditions would be thereby improved, alleviated or changed. Or is it your duty to do all that is possible in this position to change all the conditions that have here been so severely criticized? As my repeated demands to be sent to the front were refused, all I could do, therefore, was to make a personal attempt to change a system, the ideological and legal foundations of which I could no longer change, which has been illustrated by all the order presented here from the period before I was in office; I could only try to moderate these methods, so as to help to eliminate them definitely."

Question: "And so, did you consider it consistent with your conscience to remain in spite of this?"

Answer: "In view of the possibility of constantly using my influence on Hitler, Himmler and other people, I could not in my opinion reconcile it with my conscience to give up this position. I considered it my duty to take a personal stand against injustice."

As you see the defendant appeals to his conscience and you have to decide, whether this conscience, taking into consideration duty toward one's own country but also towards the community of mankind, has failed or not.

The duty which I have just mentioned, to resist the orders of evil, exists in itself for every human being, regardless of his position; this duty is expressly affirmed by Kaltenbrunner also. He who holds a state office, must in the first place be able to prove that he contributed toward abolishing the gigantic injustice which occurred in Europe as soon as he learned of it, if he does not want to become guilty. Has Dr. Kaltenbrunner presented sufficient proofs? The answer to this question I leave to your judgment. But one thing I should like to express as my opinion: This man was no conspirator, but rather he was exclusively a man acting under orders, under compulsion.

Himmler's order was to take over the main Reich Security Office. Is it right that a given order should change the fundamental aspect of the problem? This question is of the highest importance. The Charter of this Tribunal has forbidden appealing to orders for the purpose of avoiding punishment. The reasons given for this by the American Chief Prosecutor proceeded from the presumed knowledge of the crimes or their background in the minds of the higher leader which, therefore, prevented him from appealing to orders given. Like a red thread the fact runs through this trial that hardly one high official, in whatever position of public life he may have been, was put into office without the order of the highest representative of the legal authority of the state; for in the last three years of the war the already clearly distinguishable, inevitable destiny of the Reich meant for the holder of a high office the renunciation of that part of life which many people say makes life worthwhile. Even during the duration of the war orders held the office holder fast in his position as with an iron ring. There is also no doubt that he who refused to obey an order, especially in the last years of the war, had to fear his own death, and possibly also the extinction of his family.

From whatever side we approach the problem of orders in Germany, after 1933, the appeal to the above-mentioned state of necessity ought not to be denied to the defendant; because the principle of necessity, which exists also in the German criminal code and which probably exists in the criminal codes of all civilized nations, is based on the freedom of the individual being necessary for the affirmation of any guilt.

If the perpetrator is no longer free to act, because another person deprives him of this liberty by endangering his life, then, on principle, he is not guilty. I do not want at this instant, to examine whether in the German world of reality of the last years such a direct immediate danger for one's own life always existed; an encroachment upon the freedom of the man receiving orders existed in smaller or larger dimension without doubt. It seems certain to me that Himmler would have interpreted a refusal of Kaltenbrunner to take over the direction of the Reich Security-Main Office as sabotage and would, as a necessary conclusion, have eliminated him.

Hitler was one of the greatest breakers of law that world history has ever known. Many even affirm the duty to kill such a monster, so as to guarantee for millions of human beings the right to freedom and life. At these trials the most different points of view with regard to the "Putsch" especially the killing of the tyrant have been preferred by witnesses and defendants. I cannot recognize the duty, but the right is certainly not contestable. If the oppression of human freedom occurs by means of a clearly unjust, because misanthropic, order, the scales in the now ensuing conflict between obedience and freedom of conscience will be turned to the side of the latter. Also the so-called oath of allegiance could not justify a different point of view because, as everybody feels, the obligation to allegiance presupposes duties of both partners so that he who treads under foot the obligation to respect human conscience in the person of his subalterns loses, at the same moment, the right to expect obedience. The tortured conscience is freed and breaks the ties which the oath has created. Perhaps some persons will not agree with my point of view on this problem and will point at the necessity of an orderly state of community and the wholesomeness of obedience especially in the interest of this orderly state, or they will point at the prudence of those in command and at the impossibility of knowing and evaluating all such orders as the person in command can, they will point to patriotism and many more other points of view. And although all that may be correct, it remains the absolute duty, to resist an order, the purpose of which, clearly recognizable for a subaltern, contains the realization of evil and violates unequivocally the sound sentiments for humanity and peace among peoples and individuals. The phrase "In the fight of a people for life or death there is no question of legality," is not thought out to the end.

Even the immediate danger of life of the person receiving the order could not induce me to change my conviction. Dr. Kaltenbrunner would not deny that he who stands at the head of an office, of great importance to the community, is obliged to sacrifice also his life under the above-mentioned provisions. If, however the direct present danger for his own life and that of his family cannot excuse him, it does moderate his culpability. Kaltenbrunner only means to point to this moral and legal evaluation of his position. Thus he emphasized a fact, historically proven, which was one of the deeper reasons for the collapse of the Reich; for no living man can bring liberty, peace, and welfare to a country, who himself carries chains reluctantly and has lost that freedom which is the decisive characteristic of all human beings. I believe Kaltenbrunner would like to be reborn and I know that he would fight for that freedom with his life's blood. Kaltenbrunner is guilty; but he is less guilty than he appears to be for the prosecution. He will await your judgment as the last representative of an ominous symbol of a period of the Reich, darker and more laden with anguish than any other period, and yet he was a man one could not meet without a feeling of pathos.

2. FINAL PLEA by Ernst Kaltenbrunner

The Prosecution held me responsible for the concentration camps, for the destruction of Jewish life, for Einsatzgruppen and other things similar. All of these are neither in accord with the presentation of evidence nor with the truth. The accusers as well as the accused are exposed to the dangers of a summary proceeding and they must realize it.

Correct it is that I had to take over the RSHA, but in that point alone there is no guilt. Such offices exist in governments of other nations. But the task with which I was charged and the activity with which I was charged in the year 1943 was almost exclusively in the reorganization of the German political and military intelligence service, not as the successor of Heydrich but rather, almost a year after his death, when the suspicion of collaboration with the enemy of Admiral Canaris over long years existed, I, according to orders and as an officer, had to accept this post. Very shortly, to the most terrific extent, I ascertained the treason of Canaris and his helpers. The Offices IV and V of the RSHA were subordinate to me only formally, but never in fact.

The chart shown here and the chain of command which was concluded from it is wrong and misleading. Himmler, who was a master of raising the SS into the smallest fragmentary groups to bring them under his immediate influence as far as it served his purpose, together with Chief of Police Mueller, committed crimes which we know today. Contrary to public opinion, I emphatically state that the activities of Himmler and his consultants and the offices which were under him I learned of only to the smallest extent and as far as it concerned my own sphere.

In the Jewish question, I was deceived just as long as other high functionaries. Never did I approve or tolerate the biological extermination of Jewry. Anti-Semitism as found in Party and State laws was to be considered an emergency measure in time of war. The anti-Semitism of Hitler as we know it today was barbarism. I did not participate in either of these forms and I assert, as I shall show, that the prevention of the persecution of the Jews is to be traced to me because of my influence on Hitler.

The Prosecution has submitted several photographs which allegedly show my knowledge of crimes in concentration camps such as in Mauthausen. Never did I set foot in Camp Mauthausen, but only that part of the labor camps where the quarry was, where hardened criminals were employed according to the law, not political prisoners. The pictures show an administration building and nothing else. Affidavit USA 909, Pages 894 to 897 F is therefore quite factually impossible and is wrong. The picture with Hitler shows a building at a construction area of Linz, 35 kilometers away from Mauthausen.

The statement given by Dr. Morgen, the witness, seems essentially true but it needs to be supplemented as far as my person and my reactions to this are concerned. The witness in his statement was too much concerned with himself and does not say that because of my influence his office of the juridical system was transferred to Office V of the RSHA so that, as a special office, he could investigate the concentration camps to supplement the research which had been carried on. Perhaps he cannot testify as to additional happenings and incidents, contrary to Mueller, who raged as a madman as the chief of the Criminal Police Nebe did. On the same day an exact written report was sent to Hitler. On the same day I was asked to appear, and I went there. After much discussion, Hitler said that there had been an investigation against Himmler and Pohl. A special court was to be instituted, and arrest was to be the lot of those involved. Pohl was to be dismissed from his office. In front of me Hitler gave orders that Pohl should be called to him, and he gave me his pledge to the effect that even today he would take all steps against any further misdeeds.

My request to be dismissed and to be sent to the front he denied, saying that I was essential, and that I could not be spared from the intelligence service. Eichmann was arrested and I was told of the decree by Himmler in October of 1944, which confirms and puts in final form that which I have just testified in its wording is the last devilish work of Hitler.

Will the Prosecution even now not see any discrepancy that office V of the RSHA discovered the crimes of office IV, and in that fact see the proof of the fact that I never knew the true happenings, and at the moment when I realized what was taking place, protested in my own office.

Should I have left, or was it my duty to use all my powers to fight that barbarism? That alone is to be decided as my guilt.

The defamations raised by the Prosecution against me, the letter which seems to be so highly incriminating here, written to the Mayor of Vienna, which I do not remember to have signed—that matter has been clarified and explained for me today.

All of the 12,000 people who at that time, together with tens of thousands of German men and women were used to fortify the region east of Vienna, together with an additional 2,000 persons in Gunskirchen in Upper Austria, were taken care of by the International Red Cross because of my intervention and were brought to freedom. During the excitement of the cross examination I could not recall that in this period of time in which the men of Office V were active in the camps, that I could not any longer believe in a threat to Jewish life. My credibility has been doubted ever since then. My credibility would have been restored if an inquiry had been sent to the International Red Cross at Geneva.

If the question is put to me, why did you remain even after you knew what was taking place and that your superiors were committing crimes, to that I can answer only that I could not set myself up to be their judge, that not even this Tribunal here will be in a position to ask for expiation of these crimes.

In the last days the Prosecution has accused me of my participation in the murder of a French General. I heard of the murder of the German General Brodowski and the order given by Hitler to investigate the question of reprisal. I only heard of the murder here for the first time a few days ago. Panzinger was the chief of the Reichs Criminal office and was subordinate to no one except Himmler, who was the Chief of the Prisoner of War System and of the Replacement Army. He was not, as the Prosecution asserts, an official of the Secret State Police.

As far as the teletype message of the 30th of December, 1944, is concerned, with the signature in my name, in which the carrying out of the plan is directed to and made known to Himmler at his headquarters, I should like to say that from the 23d of December until the 3d of January I was in Austria with my family. This teletype message was not seen by me, and I could not have seen it, nor could I have signed it.

In November 1944, exclusively it was my orders to check the report of the Reich Press Chief on the murder of the French General. The results were sent to the headquarters.

I regretted the fact that Hitler, in a situation as I found it when I assumed office in 1943, was not in a better relationship to the churches, which are a factor in an order and which cannot be done away with. I tried to do everything possible. The presentation of evidence has seen this, and the Prosecution did not draw any consequences.

I know only that I put my powers at the disposal of the German people as a German soldier. I could only put myself at the service of the defense of those factors which had brought Germany to the abyss, and after the collapse of the Reich I still did it.

If in my work I made mistakes, if orders which are accused of being cardinal orders were given out before my time of office, then I am in a fate which is stronger than myself, but which is carrying me along with it. I am accused here because Himmler and other elements which were completely contrary to me needed deputies. Whether my story will be accepted or not, I should like to ask you that the fate and the honor of hundreds of thousands of the living and dead of the General SS, of the Waffen SS, and of the officialdom who, up until the very last, fought bravely, fought for their rights, that you do not connect them in any way with your just curse towards Himmler. Just as I, they believed that they were acting under the law.

VIII. ALFRED ROSENBERG

1. FINAL ARGUMENT by Dr. Alfred Thoma, Defense Counsel

May it please the Tribunal:

The documentary film which was shown in this room and which was supposed to illustrate the "Rise and Fall of National Socialism" begins with a speech delivered by Rosenberg concerning the development of the Party up to the taking over of power. He also describes the Munich insurrection and says that in the morning of 9 November 1923 he saw police cars with machine guns assembling in the Ludwigstrasse in Munich and he knew that the March to the Feldherrnhalle was imminent. Nevertheless he marched in the first lines. Today, also, my client takes the same position in face of the indictment formulated by the prosecutors of the United Nations. He does not want to be pictured as though nobody paid any attention to his books, his speeches, and his publications. Even today he does not want to appear as another person than he was once before, as a fighter for Germany's strong position in the world, namely a German Reich in which national freedom should be linked to social justice.

War of Aggression against the Soviet Union

Rosenberg is a German born in the Baltic provinces (Deutsch-Balte) who learned to speak Russian as a young boy, passed his examination in Moscow after the Technical College in Riga moved to Moscow during the 1st world war, took an interest in Russian literature and art, had Russian friends, and was puzzled by the fact that the Russian nation, defined by Dostojewsky as "the nation with God in its heart" was overcome by the spirit of materialistic Marxism and he considered it inconceivable and unjust that the right of self determination had often been promised indeed but never voluntarily granted to many nations of Eastern Europe which had been conquered by Tsarism as late as the 19th century.

Rosenberg became convinced that the Bolshevik Revolution was not directed against certain temporary political phenomena only but against the whole national tradition, against the religious faith and against the old rural foundations of the Eastern European nations and generally against the idea of personal property. At the end of 1918 he came to Germany and saw the danger of a Bolshevistic revolution in Germany too; he saw the whole spiritual and material civilization of the occident endangered and believed to have found his life work in the struggle against this danger as a follower of Adolf Hitler. It was a political struggle against fanatic and well-organized opponents who disposed over international resources and international backing and who acted according to the principle: "Hit the Fascists wherever you can." But as little as one can deduce from the latter slogan that the Soviets entertained intentions of military aggression against Fascist Italy, as little as one can say that the struggle of the National-Socialists against Bolshevism meant a preparation for a war of aggression against the USSR.

To defendant Rosenberg a military conflict with the Soviet Union, especially a war of aggression against the latter, seemed as likely or as unlikely as to any German or foreign politician who had read the book Mein Kampf. It is not right to maintain that he was initiated in some way in plans of aggression against the Soviet Union; he rather publicly advocated proper relations with Moscow (Doc. Re 7b P. 147). Rosenberg never wanted a military intervention, however, he feared in turn the entry of the Red Army into the border states, then into Germany.

When in August 1939 Rosenberg learned about the conclusion of the Non-Aggression Pact between the German Reich and the Soviet Union, he was as little informed about the preliminary discussions as he was about the other foreign political measures taken by the Fuehrer, he might have gone to see the Fuehrer and protested against it. He did not do it and he did not object to it with a single word which the witness Goering confirmed as being a statement of Hitler's.

As a witness, Rosenberg described (Prot. of 16 April 1946, p. 7894) that he was then suddenly called to Hitler at the beginning of April 1941 who told him that he considered a military clash with the Soviet Union as inevitable. Hitler offered two reasons for it:

1. The military occupation of Rumanian territory, namely Bessarabia and North Bukowina.

2. The tremendous increase of the Red Armies along the line of demarcation and on Soviet-Russian territory in general which had been going on for a long time.

These facts were so striking, he said, that he had already issued the appropriate military and other orders and that he would appoint Rosenberg in some way as a political adviser. As he further states as a witness, Rosenberg found himself confronted with an accomplished fact and even the sole attempt to talk about it was cut short by the Fuehrer with the remark that the orders had been issued and that hardly anything could be changed in this matter. Thereupon Rosenberg called some of his closest collaborators together because he did not know whether the military events would take place very soon or later on, and he also had some plans made concerning the treatment of the political problems. On 20 April 1941, Rosenberg received from Hitler the preliminary order to establish a central office to deal with questions concerning the East and to contact the competent highest Reich authorities with respect to these matters (Doc. 865–PS, USA 143).

If this statement made by Rosenberg in itself is not sufficient to refute the assertion made by the prosecution according to which Rosenberg is "personally responsible for the planning and execution of the war of aggression against Russia" (Brudno, on 9 Jan. 1946, p. 2278 of the protocol), and was aware of the "aggressive, predatory, character of the imminent war" (Rudenko, on 17 Apr. 1946, p. 8016 of the protocol)—if above all one does not want to admit that Rosenberg was convinced of an imminent aggressive war waged by the Soviet Union against Germany, I would like to bring up four more points in order to prove the correctness of the statements made by the defendant.

1. Rosenberg was not called to the well-known conference at the Reich Chancellery on 10 November 1937 ("Hossbach Document" Doc. 386–PS, USA–25) when Hitler disclosed for the first time his intentions of waging war; this was at a time when Rosenberg still had political influence or at least seemed to have it. If ever, he should have played the part of the intimate political instigator then.

2. Lammers in the capacity of a witness stated before this Tribunal that Hitler took all important decisions all by himself, thus also the decision concerning the war against Russia (Prot. P. 7363).

3. Upon my question about Rosenberg's influence with respect to Hitler's decisions concerning foreign policy, Goering replied before this Tribunal on 16 March 1946: "I think that after the accession to power the Fuehrer did not consult the Office of Foreign Affairs of the Party a single time about questions concerning the foreign policy and that it was created only for centrally taking care of certain questions concerning the foreign policy which came up within the party. As far as I know Rosenberg was certainly not consulted about political decisions after the accession to power." This was also confirmed by the witness Neurath on 26 June 1946.

As fourth argument I would further like to refer to the "Brief report concerning the activity of the Office of Foreign Affairs of the NSDAP." (Doc. 003–PS, USA–603). Brief mention is made in it of the "near East" in such a harmless manner, that no word has to be said about it. Also in the confidential reports 004–PS and 007–PS nothing is said about any preparations against the Soviet Union.

Administration in the East

It would be too easy, too superficial, and therefore unjust a procedure if one would say: (1) The Eastern territories were occupied in a war of aggression therefore anything the German administration has done there was criminal. (2) In his capacity of Reich Minister for the occupied Eastern territories Rosenberg was the responsible minister, therefore he must be punished for all crimes which have occurred there, at least for what happened within the scope of the jurisdiction and authority of the administrative bodies. I will have to demonstrate that this conception is not correct for legal and factual reasons.

1. *General.* Rosenberg was the organizer and the highest authority of the administration in the East. On 17 July 1941 he was appointed as Reich Minister for the occupied Eastern terri-

tories. According to instructions he performed already before that time preparatory work on questions concerning East Europe by contacting the Reich agencies concerned (Doc. 1039–PS, USA–146). He planned and set up his office for dealing centrally with questions concerning Eastern Europe (Doc. 1024–PS, USA–278). He had the provisional instructions for the Reich Commissioners drawn up (Doc. 1030–PS, USA–144), he delivered the program speech of 20 June 1941 (Doc. 1058–PS, USA–14) and above all he took part in the Fuehrer Conference of 16 July 1941 (L–221, USA–317).

In the presence of Rosenberg, Lammers, Keitel, and Borrmann Hitler said at that time that the real aims of the war against Russia should not be made known to the whole world, those present should understand clearly that "we will never withdraw from the new Eastern territories, whatever offers any opposition will be exterminated, never again must a military power develop west of the Ural; nobody but a German shall ever wear a weapon." Hitler proclaimed the subjection and the exploitation of the Eastern territories and in making these statements he was in opposition to what Rosenberg told him before—without being contradicted by Hitler—concerning his plans for the East.

Thus Hitler had probably a program of enslavement and exploitation.

Nothing is so natural and nothing is easier than to say before Rosenberg took over his Ministry already he knew Hitler's aims for the East; namely, (1) to rule it, (2) to administrate it, (3) to exploit it. Therefore he is not only an accomplice in a crime of conspiracy against peace, he is also jointly responsible for the crimes against humanity perpetrated in the Eastern territories, since Rosenberg held complete power, the highest authority in the East.

I shall deal later de jure and de facto with the question of Rosenberg's automatic responsibility in his capacity of supreme Chief of the Eastern territories. First I would like to consider the question of his individual responsibility. One could refer to two reasons: (*a*) because he allegedly participated in the preparation of the war of aggression against the Soviet Union; I have stated already that this assertion is not correct. Rosenberg has neither ideologically nor actually participated in the preparations of the war of aggression; (*b*) because he supported Hitler's plan of conquest by making plans, delivering speeches, organizing the administration.

When a minister or a general, following the instructions of the chief of State, elaborates plans or takes preparatory measures of organizational nature for events which might happen later, this activity cannot be considered as criminal even when thereby the interests of other countries are affected and even when the plans, preparations, and measures are intended for war. Only when the minister or general in question directs his activity towards things which have to be considered as criminal according to sound common sense and international sense of decency and justice can be held individually responsible. Rosenberg has continuously proved in words and deeds that the traditional conceptions of right are his conceptions also and that he is willing to stand up for them. His position was particularly difficult indeed since his supreme chief finally moved beyond the limits in his ideas, aims, and intentions, and since other strong forces also like Bormann, Himmler, and Gauleiter Koch were involved which prevented and sabotaged Rosenberg's good and fair intentions. Thus we witness the strange spectacle of a minister who governs but who partly cannot understand, partly cannot approve, partly does not know at all, the intentions of the Chief of State, and on the other hand that of a chief of State who appoints a minister to take office who is certainly an old and loyal political fellow combatant but with whom he has no spiritual contact whatsoever anymore. It would be wrong to judge without further examination such constellations according to the democratic conceptions of the responsibility of a minister. Rosenberg could not simply resign, but he also felt inwardly the duty of fighting for the opinion which appeared to him as being right and decent.

In his speech of 20 June 1941 Rosenberg says that it is the duty of the Germans to consider that Germany should not have to fight every 25 years for her holdings in the East. He by no means desires the extermination of the Slavs, but the advancement of all the nations of Eastern Europe, and the advancement not the annihilation of their natural independence. He demanded (Doc. 1058–PS, USA–147), "friendly sentiments" towards the Ukrainians, a guarantee of "national and cultural existence" for the Caucasians; he emphasized that even with a war on we were not enemies of the Russian people, whose great achievements we fully recognize. He advocated "the national right of self-determination of the people"—one of first points of the whole Soviet revolution. This was his idea, tenaciously defended till the end. The speech in question also contains the passage, of which the prosecution accuses him in particular, that the feeding of the German people during these years will be placed at the top of German demands in the East, and that the southern territories and North Caucasus would have to make up the balance in feeding the German people.

Then Rosenberg continues literally: "We do not see at all why we should be compelled to feed the Russian people also from these surplus regions. We know that this is a bitter necessity which lies beyond any sentiment. Without a doubt an extensive evacuation will be necessary, and there are very hard years ahead for the Russians. To what extent industries are to be kept up there is a question reserved for future decision." This passage comes quite suddenly and all by itself in the long speech. One feels distinctly that it has been squeezed in, it is not Rosenberg's voice. Rosenberg does not proclaim here a program of his own, but only states facts which lie beyond his will. In the first directives of the East ministry (Doc. 1056–PS, USA–605) the feeding of the population is shown to be especially urgent, as well as its supplying with all medical necessities.

On the contrary, the true Rosenberg emerges in the conference of 16 July 1941, when in response to Hitler's plans, he called attention to the university of Kiev, and to the independence and cultural advancement of the Ukraine, and when he took stand against the full power of the police and above all against the appointment of Gauleiter Erich Koch in the Ukraine. (Doc. L–221).

One will say: "What is the use of opposition and protests, what is the use of secret reservations and of feigned agreement with Hitler's intentions," Rosenberg did cooperate all the same. Therefore he is responsible too. Later on I will outline in detail how and to what extent Rosenberg did adhere to the policy in the East, what things he did not do, and how he opposed them, what he planned and desired himself, in order to defend him against the grave charge of being responsible for the alleged exploitation and enslavement of the East. Here, I would like to point out the following: It was in no way a hopeless task to begin by accepting even Hitler's most passionate statements without contradiction in the hope and with the intention of attaining nevertheless a contrary result later on. In opposition to Hitler's statement, which said that: "No other than a German may ever wear weapons in the East", it was not long, for example before, on Rosenberg's recommendation, legions of volunteers were formed from the peoples of the East, and in opposition to Hitler, an edict of tolerance was issued at the end of 1941 for the churches of the East. (Doc. 1517–PS.)

If, at first, Rosenberg could achieve nothing for the autonomy of the Eastern nations, he still adhered to his plans for the future in this respect too. First he took care of the urgent agrarian question. An agrarian order was drawn up, which it was possible to present to the Fuehrer on 15 February 1942, and which was authorized by him in its unadulterated form. It was not an instrument of exploitation, but an act of liberal formation of the agrarian constitution in the midst of the most terrible of all wars. Right in the middle of the war the eastern countries not only received a new agrarian constitution but also agricultural machines. The witness Dencker, in his affidavit, has born witness to the following deliveries to the occupied Soviet territories including the former border states:

	Number of Pieces	*Value in Reich marks*
Plough tractors, 40-50 HP	about 7,000	about 45,000,000.00
Thrashing machines	about 5,000	about 20,000,000.00
Agricultural tools	about 200,000	about 30,000,000.00
Gas generators for German and Russian tractors	about 24,000	about 35,000,000.00
Reaping machines	about 35,000	about 15,000,000.00
Spare parts for German and Russian tractors and agricultural machines	....	about 10,000,000.00
Scythes and sickles	....	about 10,000,000.00
Miscellaneous (hand equipment, tools, driving-belts, etc.)	....	about 15,000,000.00
Total	....	about 180,000,000.00

I do not think one can say that these deliveries were made in view of an exploitation. So, in this too, Rosenberg accomplished a piece of constructive work that was really a blessing.

In the following, I will first treat the question of Rosenberg's automatic responsibility as minister for the Eastern territories and then his criminal liability on the grounds of his official position.

2. *Automatic responsibility (criminal liability).* On 17 July 1941, Rosenberg was appointed Reich Minister for the occupied East territories. Two Reich commissariats were set up as supreme territorial authorities: "Ostland" (Esthonia, Latvia, Lithuania, and white-Ruthenia) under the Reich Commissioner Lohse and Ukraine under Reich commissioner Koch. The Reich commissariats were divided into general districts and regions. Right from the beginning, the East Ministry was not conceived as an administrative authority built on a large scale, but as a central office, and supreme authority, which was to confine itself to over-

all instructions and fundamental directives, and in addition was to insure the reinforcing of material and personnel. The actual government was the duty of the Reich commissioner, he was the sovereign in his territory.

It is, moreover, of special importance that Rosenberg as Minister for the East was not at the head of the whole Eastern administration, but that several top authorities existed at the same time. Goering, who was plenipotentiary for the four-year plan, was responsible for the control of the economy in all occupied territories, and in this respect had authority over the minister for the East, for Rosenberg could only issue economic decrees with Goering's permission. The chief of the German police Himmler was solely and exclusively competent for the security of the occupied Eastern territories as far as police authority was concerned; there was no police division at all in the ministry for the East, neither in the Reich commissariats. Rosenberg's competence was furthermore undermined by Himmler the "Reich commissioner for the preservation of German nationality" and by Speer, on behalf of whom a Fuehrer decree detached all technical matters from the East administration. It was further weakened by Goebbels who claimed for himself the control of propaganda in the occupied Eastern territories too. Later on I shall come to the important question of labor employment which was put under the authority of Sauckel.

Nevertheless, Rosenberg was the minister responsible for the occupied Eastern territories. In this respect, the following must be emphasized: In this trial Rosenberg is not made responsible from the political standpoint, since the high tribunal is no parliament; neither is he made responsible from the point of view of constitutional law, for the high tribunal is not a Supreme Court of Judicature. The liability of the defendant with respect to civil law is not in question either; but only his penal liability, his responsibility for his own alleged crimes and for the crimes of others. I do not need to outline in more detail that for a penal liability and condemnation, it must be proved that the defendant culpably and illegally committed acts forming a case which is punishable by law, and that he may only be punished for a non-action, i.e., a commission, if he had the legal duty to act, and if it was due to his inaction that the criminal result occurred, i.e., if he had the factual possibility of preventing the criminal result.

It seems to me of decisive importance that Rosenberg was a minister for the occupied Eastern territories, but not a sovereign. The Reich commissioners were sovereigns of the gigantic territories "Ostland" and "Ukraine". The lines along which these territories were to be constitutionally remodeled were not visible yet, but one thing was certain: The Reich Commissioner was the highest authority. For instance, it was he, who in the most important measures, like the shooting of inhabitants of a region for acts of sabotage, had the right to make the ultimate decision. (Doc. EC–347, USA–320, Prot. P. 2285.) The Reich, i.e., partly the East ministry and partly other authorities, detained the right to make fundamental legislation and give over-all supervision. By a slight change in the well known remark of Benjamin Constant, the French professor of constitutional law: "Le roi regne, mais il ne gouverne pas" one may define in the following way Rosenberg's position as minister for the occupied territories of the East: "Le ministre gouverne, mais il ne regne pas". As in certain dominions of the British empire, there existed a sovereignty of the Reich Commissioner with a central over-all supervision on the part of the minister for the East. Today, nobody would think of summoning the competent English minister before a tribunal, because a governor in India had allowed native villages to be bombed and burned down. And so I come to my conclusion, that in Rosenberg's case there exists no automatic, penal responsibility for the nonprevention of crimes in the East, because although he had the authority and supervision but was not sovereign, the two Reich Commissioners had the supreme authority.

It must furthermore be asked and briefly examined, whether the defendant is individually responsible, i.e., individually guilty of criminal exploitation and enslavement of the nations of the East and, may be, of further crimes. What was his attitude, what were the general lines and general trends of his policy, what did he positively do, and what did he prevent or at least try to prevent?

3. *Individual responsibility (penal culpability) a. General lines and general trends of Rosenberg's policy in the East.* In the Baltic countries, national administrations (directorates) were installed under German supervision. The German administration was compelled by the Reich minister for the occupied territories of the East, to show the greatest understanding for all desires which could be gratified and strive for a good relationship with the Baltic countries; the Baltic countries had a free legal, educational, and cultural system and were only limited with respect to questions concerning politics, economy, and the police. After the war of 1914-1918 agrarian reform in the Baltic states was carried out at the expense of the 700 years old German property. Nevertheless, Rosenberg, as Minister for the East, made a law giving back to private owners the farms which had already been collectivized

in past by the Soviet Union after 1940, and in this restitution of the soil which had once been taken away from the German proprietors showed the greatest good will conceivable on the part of the German Reich.

This, as well as the already-mentioned agrarian order, has been expressly confirmed by witness Riecke (Transcript P. 8032).

In the general district of White Ruthenia, the independent administration was initiated under Reich Commissar Kube. The "White Ruthenia Central Committee" was founded, furthermore a White Ruthenian relief system and a White Ruthenian youth organization. When a White Ruthenian youth delegation returned from a visit to Germany, Kube said that he would continue to act as a father to the White Ruthenian youth. In the following night he was murdered, but his policy was not changed. I should like to observe in passing that the actual Russian territories between Narwa and Leningrad and around Smolensk had remained all the time under military administration. Likewise the districts around Kharkow and the Crimea.

As far as the Ukraine is concerned, Rosenberg intended to give it, as soon as possible, an extensive central self-administrative sovereignty, similar to the directorates in the Baltic states and pledged to a definite advancement of the cultural and educational needs of the people. After Rosenberg had originally thought that he could assume, Hitler agreed to this idea, another conception came to prevail, namely that all forces should be directed towards the war economy. Rosenberg only managed to achieve and carry through one thing: The new agrarian order of 15 February 1942 which provided for a transition from the collective economy of the Soviet Union to personal exploitation, and then to ownership by the peasants. On 23 June 1943 the property declaration was issued as a complement to this. At first it was not possible to carry it out because of Reich Commissar Koch's resistance, but then military events brought everything to an end. A further fundamental decree was based on a general adjustment of the school system, which Rosenberg had ordered to be worked out, because the Reich Commissioner of the Ukraine declined to do it himself. Rosenberg provided for elementary schools and higher technical schools, the Reich Commissioner protested against this. On account of the conflict which became more and more acute between Rosenberg and Reich Commissioner Koch, Hitler issued, in June 1943, the following written instructions: The Reich Commissioner had no right to make any obstructions, but the Reich Minister for the occupied territories of the East should confine himself to essential questions, and when issuing any orders should make it possible for the Reich Commissioner of the Ukraine to take up his position beforehand, which practically meant Koch's coordination along with Rosenberg.

b. Witness Lammers. During his examination of 8 April 1946 (Transcript P. 7374) the witness Lammers described Rosenberg's peculiar constitutional position as Reich Minister for the occupied territories of the East, and his political position which became weaker and weaker. I would like to emphasize the following striking and especially important declarations made by the witness: the authority of the Reich Minister for the occupied territories of the East was undermined by the Wehrmacht, by Goering as plenipotentiary for the four-year plan, by Himmler as chief of the German police, by Himmler as Reich Commissioner for the preservation of German nationality (resettlement measures), by Sauckel as general plenipotentiary for Labor utilization, by Speer in the field of armaments and technique and finally through differences of opinion with propaganda minister Goebbels. Furthermore, Rosenberg was limited by the fact that two Reich Commissioners, Lohse and Koch, were appointed for the occupied Eastern territories. The higher SS and police chief was "personally and directly" subordinated to the Reich Commissioner, but, as Lammers has declared, in technical respects he could not receive any orders from Rosenberg or from the Reich Commissioner but only from Himmler. Lammers said furthermore: Rosenberg always wished to pursue a moderate policy in the East, he was without any doubt against a "policy of extermination" and against a "policy of deportation", which was often advocated by other parties. He made efforts to rebuild agriculture through the agrarian law, to put order into the educational system, church affairs, the universities, and schools. Rosenberg had great difficulties in succeeding for the Reich Commissioner for the Ukraine before all others simply did not follow Rosenberg's orders. Rosenberg was for setting up a certain independence of the Eastern nations, he especially had at heart the cultural interests of the latter. The differences of opinion between Koch and Rosenberg filled volumes of files. .Hitler called Rosenberg and Koch, and decided that they should meet each month in order to consult each other. The witness Lammers said quite rightly that for Rosenberg as the superior minister it was unendurable to have to come to an agreement in each case with his subordinate the Reich Commissioner; subsequently it was shown that in spite of the meeting they came to no agreement, and finally it was Mr. Koch who was right in the eyes of the Fuehrer. As Lammers finally says, it was about the end of 1943 that Rosenberg was received for the last time by the

Fuehrer, and before that time too he had always great difficulties in reaching the Fuehrer. There were no more Reich Cabinet sessions since 1937 already.

c. Rosenberg and Koch. Hitler turned his attention more and more to the Bormann-Himmler group. The East became the ground for experiment. For this group, as is now quite clear today, it seemed hopeless to look for an understanding on the part of Rosenberg for the development of the Reich as they wished it. Rosenberg had no idea of the extent of the fight put up against him. His argument with Reich Commissioner Koch, the exponent of Himmler and Bormann, is a proof of this ignorance, but it is also a complete proof of Rosenberg's integrity.

On 14 December 1942, Rosenberg issued an instruction to the Reich commissioners of the Ukraine (1921–PS, Ro.11.) ; his other instructions have unfortunately not been found. In this, Rosenberg requests the chiefs of the administration to preserve decent attitudes and views, he demands justice and human understanding for the population, which has always seen in Germany the bearer of legal order; war brings terrible hardship, but every offense must be fairly examined and judged and must not be punished to excess; it is absolutely inadmissible that German agencies oppose the population with contemptuous speeches. One can only show one is the master by taking the right attitude and through one's actions, not by obtrusive behavior; our own attitude must bring others to respect the Germans; those chiefs of the administration, who have shown themselves unworthy of their task, who have misused the authority they were given, and who by their pernicious behavior have become unworthy of our uniform, must be treated accordingly, summoned before a court or removed to Germany.

The echo, which such decrees aroused on the part of Koch, is shown in his memorandum of 16 March 1943 (192–PS, Ro.14). Koch writes: "It is strange, that not only a correct attitude must be taken with the Ukrainians, but that we must even be amiable to them and always ready to help."

Furthermore, Rosenberg demands esteem for the highly-developed self-consciousness of the Ukrainian people and according to Rosenberg a high degree of cultural self-administration is desirable for the Ukraine, nations as big as the Ukrainian one is cannot be kept in permanent dependence, the Eastern campaign is a political campaign and not an economic forage raid. Here Koch is speaking to Rosenberg in a cynical manner about the climax reached in the relations of his organization with Ukrainian emigration. There are other decrees of Rosenberg's which are criticized by Koch. One of these is the decree of 18.6.1942 concerning the acquisition by Rosenberg of Ukrainian schoolbooks for a total of 2,3 millions Reich Marks to be charged to the budget of the Reich Commissariat without even previously getting in touch with Koch. One million primers, one million spelling charts, and 200,000 arithmetic books were to be provided at a time when there was not enough left for German school children.

Koch goes on saying: "It is not necessary to point out repeatedly in the decrees issued by your Ministry and in long-distance remonstrances that any coercion in hiring laborers should be avoided and that the East Ministry even demands to be informed of any instance in which compulsion has been used." By a subsequent decree Koch is blamed to have caused the closing of vocational schools and that Rosenberg ordered the General Commissars to adopt another school policy, circumventing the Reich Commissar's authority.

Koch then concludes with a veiled threat that to him, a veteran Gauleiter, the way to the Fuehrer would not be barred.

So much challenging criticism of Rosenberg, so much unintentional praise, and so much proof of absolute decency of his behavior and the farsighted and statesmanlike direction of his office as Chief of the East Administration!

The last document in the fight of Rosenberg against Koch is the report regarding the Reich Commissar Koch and the timber region of Zumand of 2 April 1943 (032–PS) regarding which Rosenberg gave exhaustive information as a witness. In this very matter Rosenberg displayed his conscientiousness so clearly. (Protocol, p. 7930 and pp. 8019-8021.)

d. Rosenberg and Bormann. And now we have to unroll another scene before our eyes because the prosecution attached specific importance to it. In July 1942, Bormann wrote a letter to Rosenberg. Rosenberg replied and a third party, Dr. Markull, an associate of Rosenberg in his Ministry, wrote a criticism of it. (Transcript p. 7971). According to Mr. Markull's representation, the meaning of Bormann's letter, the original of which is not extant, contained the following points: the Slavs should work for us; if of no use for us, they ought to die; health provisions were superfluous; the fertility of the Slavs was undesirable; their education dangerous: it will do if they can count up to one hundred. Every educated person is a potential enemy. We were leaving them their religion as an outlet. As sustenance they should receive only the barest necessities, we are the masters and we come first.

To that letter of the closest collaborator of Hitler there could be only one reply by Rosenberg: feigned consent and feigned compliance. In the inner circle of the East Ministry there arose considerable apprehensions regarding this significant change in the attitude of their chief, apprehensions which were expressed in Dr. Markull's memorandum of 5.9.1942. Rosenberg as a witness has stated, and there cannot exist any doubt about it by reading that writing impartially, that he agreed only for the sake of pacifying Hitler and Bormann. He wanted to insure himself against an attack from the Fuehrer Headquarters which he anticipated with certainty, because he supposedly did more for the Eastern population than for the German people, because he required more physicians than there were available for sick Germans, etc. The memorandum of Markull is the truest possible reflexion of Rosenberg's personality and influence as it shows the anxious subordinate trying to conjure the former spirit of his Minister, as he got to know and to love him in his work, against an alien phantom who seemed to have taken his place.

It says there that though the train of thought conforms with the policy of the Reich Commissar Koch, but not with the decrees of the Minister and the conception of at least 80 per cent of the regional commissars and specialists counting on their Minister, according to which decrees the Eastern population should be treated decently and with understanding, that it is showing a surprisingly high capacity for culture, that their efficiency in work is good, but that we are about to dissipate a precious capital of gratitude, love, and confidence. That the controversy between the Minister and the Reich Commissar was well known among the high authorities of the Reich and that it was no secret that the Ministry was unable to carry out its policies against the Reich Commissars, who considered the East Ministry as entirely superfluous. That the writings of Bormann would disavow the total policy of the Minister up to now and that one had the impression that Koch has been considered by Hitler as being right in his opposition to the Minister. That since its foundation the Ministry had to complain about an ever increasing loss of power. The higher SS and Police officials refused to render to the General Commissar the normal honors such as reports, etc. One jurisdiction of the East Minister after another was transferred to different highest Reich authorities. In the offices in Berlin it was openly said that the remodeling of the Ministry into a mere Operations staff (Fuehrungsstab) was to be expected. On the other hand, the Reich Ministry for the Occupied Eastern Territories, due to the personality of its leader, enjoyed the exceptional respect of the public.

Dr. Markull implores the Minister to stand by his original ideas, that the unfortunate Master complex should be as much avoided as the opinion that the intelligentsia were alien to the masses.

The influence of spiritual forces should be taken into consideration. Germany must prove a "righteous judge", acknowledging the national and cultural rights of nations. Such has been the ideas of the Minister before and such they must remain.

Rosenberg's attitude did not change in fact, as at that very time he was working on the great School Order (Schulverordnung). Later on he effected the reopening primarily of the medical faculties in colleges. And then it came to the conflict with the Fuehrer in May 1943.

4. *Tendering of resignation.* On 12.10.1944 Rosenberg tendered his resignation through Lammers to the Fuehrer (Doc. Ro. 14), because the German Eastern policies in general and the political psychological treatment of Eastern nations in particular had been opposed from the very start to his previously conceived plan of autonomy of the Eastern nations and of the cultural development of their capacities amid an all-European conception of a family of nations on the continent. Now he had made up his mind seeing a great statesmanlike program gone to pieces.

All he could do in regard to the policy of enslavement and looting which was going on in his country was merely to accept memoranda from his colleagues in the Ministry or at best indulge in a futile paper war with people like Koch.

He was not strong enough against the blinded forces in the East and what plans they wanted to carry out and he was powerless against their influence, being in addition totally unaware at that time of all police and army orders, now presented here to the Tribunal.

When Rosenberg once reminded Hitler of the foundation of a university in Kiev, Hitler apparently agreed. After Rosenberg had left and he was alone with Goering, Hitler said: "This fellow has special worries. We have more important matters on our mind now than universities in Kiev." (Protocol of 16-3-46, morning, 10-13 hours).

No episode can illustrate the theme better than all the documents: the theme, Rosenberg and reality in the East; and the other theme, Rosenberg as the alleged inspirator of Hitler. As Rosenberg did not receive any reply to the request for resignation, he tried many times to talk to Hitler personally. It was all in vain.

Labor Employment in the East

On 11.12.1945 Mr. Dodd said: "The system of hatred, barbarism, and denial of personal rights, which the conspirators have elevated to the national philosophy of Germany, has followed the national-socialist masters when they overran Europe. Foreign workers became the slaves of the master race, being deported and enslaved in millions." And on 8.2.1946 General Rudenko said (Prot. p. 4116) : "In the long line of ruthless crimes committed by the German fascist troops of occupation, the forcible deportation of peaceful citizens into slavery and bondage in Germany takes a particularly important place. For the inhuman and barbaric instructions, directives, and orders of the Hitler government, whose purpose was the carrying out of the deportation of Soviet people into German slavery," he said, "Goering, Keitel, Rosenberg, and Sauckel were particularly responsible."

1. *Sauckel's jurisdiction.* I have already spoken of the formal and individual responsibility of Rosenberg as Reich Minister for the occupied Eastern territory. I have already explained, too, that in the field of labor employment it was not Rosenberg, but Sauckel who, as General Plenipotentiary for the Employment of labor, was the highest instance and the responsible person, by virtue of the Fuehrer's decree of 21.3.1942. (See e.g. Doc. 580–PS, and the writings of the R.M.f.d.b.O. (Rosenberg) to the Reichs Chancellery of 6.3.1942.) Thus Sauckel in his field was Rosenberg's superior.

He wrote on 10.3.1942 to Rosenberg (Doc. 017–PS, USA–180) : "The Fuehrer has drawn up new and most urgent armament programs which require the speediest employment of 2 million additional foreign workers. For the execution of his decree of 21.3.1942 the Fuehrer has given me for my further tasks more authority, particularly empowering me to use my own judgment in taking all measures in the Reich and in the occupied Eastern territories in order to insure under any circumstances an organized employment of labor for the German armament industry." In his "Program for the Employment of Labor" of 24.4.1942 (Doc. 016–PS, USA–168) he emphasizes that the regional employment offices are in charge of all technical and administrative matters of labor employment coming under the exclusive competence and responsibility of the General Plenipotentiary for the Employment of Labor. The defense of Sauckel is not my task. But may I point out that he also did not take over his great and difficult task with feeling of hatred and intentions of enslavement. In his program for the employment of labor just mentioned he says for instance: "Everything has to be avoided which, beyond the shortages and hardships caused by war conditions, would aggravate and even cause unnecessary sufferings to foreign male and female workers during their stay in Germany. It stands to reason to make their presence and their work in Germany, without any loss for ourselves, as bearable as possible. On that point Sauckel and Rosenberg shared the same opinion. Neither is it my task to state and to prove that many hundreds of thousands of foreign workers have found their good fortune in Germany, that in fact numberless persons were better off here than in their fatherland, but I am only concerned with the bad conditions which may have been charged to the defendant Rosenberg.

2. *Central agency for nationals of the eastern territories.* The war was getting more and more intensive in its totality and brutality, and the German worker and any other German certainly lived like anything but a lord. So far as he was not drafted into the army, the German because of obligatory service was assigned to some work, had to work long and hard, and was separated from his family, had to be satisfied with poor lodgings, particularly due to progressive destructions by air raids, and he also was severely punished for evading or delaying work.

The fact that the foreign worker was also affected by that totality and brutality, in some respects undoubtedly more than the German, certainly cannot be charged to Rosenberg, neither legally nor morally. His Ministry was established by him as a central agency for nationals of the Eastern Territories, filled with trustworthy persons from all Eastern nations, which had neither policy tasks nor any other authority in the labor administration, but served the welfare of the Eastern nations. In its report of 30-9-1942 (Doc. 084–PS, USA 199) all kinds of defects are pointed out, that the lodging, treatment, food, and payment of wages of Eastern workers have given rise to severe criticism. Though much has been improved (sealing date 1-10-42) the general condition of the Eastern worker is still unsatisfactory. Rosenberg therefore should have a consultation with Hitler in order to ask for his personal vigorous intervention, particularly to get Himmler to annul his general instructions for the treatment of Eastern workers, to instruct the Party and its chancellery to keep in mind their responsibility before history in treating the millions of former Soviet citizens, and to consult the Reich Minister on any measures concerning Eastern workers employed in the Reich. It is finally proposed to enlarge without delay the Central Agency for Eastern nationals to function as an extended arm of the Reich Ministry East and as representative of foreign nationals from the occupied territories residing in Germany, thus being able to look after their affairs more effectively. In this spirit, namely in the spirit of social trust and human welfare, the Eastern Ministry worked for the Eastern workers.

3. *Rosenberg and Sauckel.* To refute the accusation that Rosenberg was active as a protagonist of the system of hatred and barbarism, of denying human rights and of enslavement, I must add the following. Rosenberg received further unfavorable reports, one being the report of 7.10.1942 about the bad treatment of Ukrainian skilled workers (054–PS, USA–198). Abuses in recruiting and during transportation were pointed out; the workers were frequently dragged out of their beds at night and locked up in cellars until the time of their departure; threats and blows by the rural militia were a matter of course; food brought from home by the skilled workers was often taken from them by the militia; during transportation to Germany neglects and transgressions on the part of the escorting units occurred, etc.

Rosenberg had no authority whatsoever to intervene in those matters. But he tried to do so in a letter of 21.12.1942 to Sauckel (018–PS, USA–186). Rosenberg first admits his fundamental accord with Sauckel, but after a few tactical and polite cliches he complains seriously and urgently about the methods used in the employment of labor: "I must emphatically request for reasons of my responsibility for the occupied Eastern territories, that any methods to supply the required contingents be excluded, if I or my associates might be accused one day for tolerating them and for their consequences."

Rosenberg further states that he empowered the Reich Commissar for the Ukraine to make use, so far as required, of his sovereign right by giving attention to the elimination of recruiting methods which are running counter to the interests of warfare and war economy in the occupied territories. He, Rosenberg, and the Reich Commissars cannot help being surprised that in numerous instances measures which should have been determined by civilian authorities were first communicated to him by the police or other offices. Without coordination of their mutual wishes, he, Rosenberg, was unfortunately unable to accept the joint responsibility for consequences resulting from these reported conditions. In conclusion Rosenberg expresses the wish to put an early end to such conditions for the sake of their common interests. Rosenberg also tried a personal consultation with Sauckel, and got Sauckel to promise that he would do everything to bring about a fair solution of all these questions. (Conversation of 14.4.1942, Doc. 020 PS, Ro. 9.) It was beyond Rosenberg's power and authority to do more. His secret opponent, supported by higher authorities, was Reich Commissar Koch, who was indeed the chief culprit in the cruel recruiting and employment methods for Eastern workers and whose influence Rosenberg was unable to counteract. (See the same document.)

When the prosecutor (Brudno on 9.1.1946, Prot. p. 2277/78) charges the defendant for protesting against these methods not for humanitarian reasons but for the sake of political expedience, I can only say that in my opinion one cannot simply maintain that the defendant Rosenberg is devoid of any human qualities without some sound reasons.

4. *"Hay action" (Heuaktion).* As an example of the defendant's particular bestiality the so-called "Hay action" has been repeatedly pointed out by the prosecution. (031–PS, USA–171.) It concerned the intention of the army group "Center" to evacuate 40 to 50 thousand juveniles from the area of operation, as they represented a considerable burden to the area of operation and, besides, were in the majority without any parental supervision. Villages for children were to be established behind the front lines under native supervision. One of these villages had already proved its value. It was expected that through the Organization Todt, being a particularly appropriate organization due to its technical and other possibilities, the juveniles would be introduced to German handicraft first as apprentices in order to employ them as skilled workers after two years training. At first Rosenberg, as the Reich Minister for the occupied Eastern territories, was against it, because he feared that the action might be considered as a deportation of children and on the other hand because the juveniles did not represent a considerable increase of military strength. The chief of the political operational staff approached Rosenberg again that the army group "Center" attached particular importance to the fact that the children should reach the Reich not by the authority of the General Plenipotentiary for the Employment of Labor, but through the agencies of the Reich Minister East, as only then could they be assured a correct treatment. The Army Group wanted the action to be carried out under the most loyal conditions and wanted special regulations to be issued with regard to the taking care of these people, as regards a mail service between them and their parents, etc. In the event of a possible reoccupation of the territory the East Ministry could then let the boys go back. Together with their parents they would certainly form a positive element during the subsequent reconstruction of the territory. Finally as reason for the second request addressed to the Minister it was stated in addition that the boys, to be sure, would not essentially contribute to strengthening the military power of the enemy, but that the important factor in this

case was the long-range weakening of the biological strength of the enemy; not only the Reichsfuehrer SS but also the Fuehrer had expressed themselves to this effect. Rosenberg finally gave his consent to this action.

To this it may be said that it concerned a field which was not at all within the jurisdiction of Rosenberg's administration. He did not want to destroy foreign peoples even if biological weakening was given him as a reason—a reason which he himself did not recognize. Instead he wanted to have the children educated and trained in order to bring them with their parents back to their homes later on. That is more or less the contrary of what the defendant is criminally charged with. Later on (late in summer 1943) Rosenberg visited the Junker's plants in Dessau where approximately 4,700 young White Ruthenian craftsmen were employed, and also visited a White Ruthenian children's camp. The clothing of young workmen was irreproachable, they were industrious, enjoyed the best treatment and got along very well with the Germans. As Rosenberg was able to see for himself the young people were taught languages and mathematics by Russian teachers. The children were cared for in forest camps by White Ruthenian mothers and women teachers. The figure of 40,000, moreover, was never attained, in fact, barely half of it.

The attempt of the prosecution in this instance to appeal especially and to the disadvantage of the defendant to considerations of humanity cannot be successful in my estimation. For it is exactly this example which compelled me to point out the following in particular: We were in the midst of a war which was being conducted with terrible intensity on both parts. Is not war in itself "monstrous bestiality"? The "weakening of the biological strength of nations" is truly a fitting expression for the goal and purpose of the whole war, for that is what the thoughts and efforts of both belligerent parties were aimed at. It is impossible to think that one should want to forget this in judging the actions of the defendants, and that one should hold the defendants responsible not only for unleashing the war but in addition for the fact that war in its very essence constitutes a great crime on the part of mankind both against itself and against the laws of life.

5. *Matters of International Law.* The prosecution contends that Rosenberg is guilty also insofar as it was he who issued the inhuman and barbarian decrees which aimed at carrying out the deportation of Soviet people into German slavery; this brings me to discuss the question as to whether the compulsory labor decree of 19 December 1941 and Rosenberg's other decrees concerning

compulsory labor for the inhabitants of the Eastern territories were contrary to international law.

The Eastern territories administered by Rosenberg had suffered a military occupation during the war. Through this "occupation bellica" Germany realized a complete domination and had the same sovereignty as over her own territory. While according to previous conceptions of international law the occupying power could act and rule arbitrarily without consideration of rights and laws, recent developments in international law eliminated the principle of force and brought victory to the principles of humanity and culture; therefore, the formerly unlimited might of the occupying power was modified into limited rights; the Hague Rules of Land Warfare stipulated in particular the legal duties of the occupying power. On the other hand, it is not true either that the Rules of Land Warfare set up only certain rights for the occupying power; they merely set bounds to the intrinsically unlimited right of the occupying force to exercise all powers deriving from territorial sovereignty over an occupied territory. From this results the following principle which is recognized by international law:

Measures undertaken by an occupying power in an occupied territory are legal as long as they are not in opposition to an authenticated legal stipulation of the International Rules of Warfare. Supposition, therefore, would indicate that the occupying power is entitled to the full exercise of all powers deriving from territorial sovereignty over an occupied territory. According to the uniform opinion of experts on international law the occupying power acts by virtue of an original law of its own which is guaranteed and defined as to contents by international law only, in the interest of its own conduct of the war as well as for the protection of the civilian population in the occupied territory. (Cf. Heyland in the Handbook on International Law, published by Stier-Somlo, 1923).

The inhabitants of the occupied territory no longer have a duty of allegiance to the enemy sovereign but only to the occupying power; the will of the occupying power rules and decides in an occupied territory; the occupying power is the executor of its own will; its own interests alone are decisive for the exercise of its sovereign rights and it, therefore, is at liberty to act against the interests of the enemy state. (Heyland, as above, p. 13).

In view of article 52 of the Hague Rules of Land Warfare the right to conscript labor in the occupied territory is denied. It is stipulated thereby that labor services may be demanded from the inhabitants of the occupied territory; the employment must be limited to the requirements of the occupation forces, it must be adjusted to the available resources of the country and must be of such a nature as not to compel the population to participate in military operations against their own country. In these stipulations I cannot discern any prohibition of labor—conscription in occupied territories; on the contrary, I consider that an approval of compulsory labor service can be deduced from them at once. The employment of such labor in war industry is undoubtedly in accordance with the requirements of the occupation forces and, in my estimation, it is equally beyond doubt that this constitutes no commitment to military operations. The Rules of Land Warfare contain no stipulations as to whether labor service may be demanded only in the home country or whether the conscript may be transported into the native land of the occupying power for the purpose of rendering labor services there. Thus, the general principle holds good, that supposition speaks for the authority of the occupying power to exercise to their full extent all powers deriving from territorial sovereignty.

If one takes the correct stand that the International Rules of Warfare should tend to humanize war by limiting the rights of the belligerents and that more progress could be made in this sense one must consider, on the other hand, that the stern reality of war tends to lead in the opposite direction. Present day warfare is no longer what it was for people in 1907; war has developed into total war, a life and death struggle of annihilation, in which the very last and remotest physical and moral forces of the nations are mobilized, and the loss of which, as is shown by the example of Germany, means unconditional surrender and total destruction of her existence as a state.

Can one maintain in view of this fact that Germany in this struggle of life and death should not have been granted the basic right of self-preservation recognized by international law? (Cf. Strupp in Handbook on International Law, published by Stier-Somlo, Stuttgart 1920, part III, "Violations of International Law," pages 121 and following.)

There is no doubt that the very existence of the state was at stake, i.e., it was an emergency which justified the compulsory employment of labor even if it had not have been permissible according to international law. It is inherent in the character of that anomaly called war that international law, as soon as the state of war has been proclaimed, is set aside in the interest of the objective of that war, the overpowering of the enemy. (Strupp, as above, page 172.) Even though the development of civilization was accompanied by a progressive moderation of this conception according to which everything goes in war until the enemy is destroyed, the rules of warfare constitute even today a compromise between the demands of military necessity with their fundamental boundlessness and chastened humanitarian and civilized views.

And one thing is certain, at any rate, namely that the existence of a genuine emergency may be pleaded even under the stipulations of the Hague RLW. During the negotiations preceding the formulation of article 46 of the RLW the following was stated literally and without any opposition: "The restrictions will effect the liberty of action of the belligerents in certain extreme emergencies"; for extreme emergencies, therefore, a state of emergency may be pleaded. It is a recognized international law that even an aggressor must not be denied the right of pleading a state of emergency in case his existence is directly threatened. (Strupp, p. 170.)

Persecution of Jews

Contrary to the assumption of the Prosecution, Rosenberg was by no means the inspirer of Jewish persecution, any more than he was one of the leaders and originators of the policy adopted by the Party and the German Reich, as the Prosecution claims (Walsh on Dec. 13, 1945, transcript p. 1244). Certainly, Rosenberg was a convinced anti-Semite who expressed his conviction and the reasons for it both verbally and in writing. However, in his case anti-Semitism was not the most outstanding of his activities. In his book "Blood and Honor", speeches and essays 1919-1933, out of 64 essays, e.g., only one had a title referring to Jewry. The same applies to the other two volumes of his speeches. He felt his spiritual ancestors to be the mystic Master Eckehart, Goethe, Lagarde, and Houston Stewart Chamberlain; anti-Semitism was for him a negative momentum, his chief and most positive efforts were directed toward the publication of a new German intellectual attitude and a new German culture. Because he found this endangered after 1918, he became an opposer of Jewry. Even such different personalities as von Papen, von Neurath, Raeder, now confessed to their belief that the penetration of the Jewish element into the whole of public life was so great that a change must be brought about. It strikes me as very important, however, that the nature of Rosenberg's anti-Semitism was intellectual and above all, noble; e.g., at the Party Session 1933 he spoke plainly of a "chivalrous" solution of the Jewish question. We never heard Rosenberg use expressions like "We must annihilate the Jews wherever we find them; we shall take measures that will lead to a sure success. We must cut out all feelings of sympathy". The prosecution itself quotes the following as an expression of the program Rosenberg set up for himself:

"The Jewish question will find a decisive solution after the Jews have been ousted, as a matter of course, from all official positions, and through the setting up of Ghettos" (Walsh, Prot. p. 1236, Doc. 1028–PS, USA–273).

It was not a mere question of chance that Rosenberg did not take part in the boycotting of Jews in 1933, that he was not called upon to help work out the laws against Jews 1933/35, etc. (Expatriation, prohibition of marriages, withdrawal of the right to vote, expulsion from the more important positions and offices, etc.)

Above all, he never took part in the action of 1938 against the Jews, nor in the destruction of synagogues and anti-Semitic demonstrations. Neither was he the instigator in the background, who sent out smaller people to commit certain actions or ordered them to do so. To be sure, Rosenberg was a true follower of Hitler's, of the kind that took up Hitler's slogans and passed them on. Like the motto "The Jewish question will be solved only when the last Jew has left Germany and the European Continent." Or once the slogan about the "extermination of Jewry."

Exaggerated expressions were always part of the National-Socialist weapons of propaganda; a Hitler speech without insults to his internal or external political opponents, or without threats of extermination was hardly imaginable. Everyone of Hitler's speeches was echoed a million times by Goebbels down to the last speaker of the Party in a small country inn; the same sentences and the same words were repeated as Hitler had used and not only in all the political speeches, but in the German press, too, in all the leading articles and essays, until weeks or months later a new speech was held which elicited a new echo of a similar kind. Rosenberg made no exception to this. He repeated all of Hitler's slogans just like the rest, that of the "Solution to the Jewish question", and once also that of the "Extermination of Jewry", etc. Apparently, like Hitler's other supporters, gave little thought to the fact that in reality none of these words are clear but they have a sinister double meaning and that though they may mean real expulsion, they may also mean the physical annihilation and murdering of Jews.

Quite apart from the knowledge and will of the German people, and apart from the knowledge and will of the majority of the leaders of the Party, there was hatched and carried out from 1941 onwards a mass crime which surpasses all human conceptions of reason and morality. The "Jewish question" was even further "developed" and brought to its so-called "final solution". The Tribunal will have to decide the question: Is Rosenberg, too, as the specially characteristic exponent of the Party and Reich Minister for the occupied territories, responsible for the murdering of Jews, and particularly for the murdering of Jews in the East? Or must it be recognized and admitted that though he stands at a hair's breadth from the abyss, it was after all nothing but external circumstances which led up to it all, and these circumstances were outside his sphere of responsibility and guilt.

I believe I can say with complete conviction that Rosenberg never aimed either openly or in secret at the physical extermination of the Jews. His reserve and moderation were certainly no mere tactics. The gradual slipping of anti-Semitism into crime took place without his knowledge or his will. The fact in itself that he preached anti-Semitism justifies his punishment as a murderer of Jews as little as one could hold Rousseau and Mirabeau responsible for the subsequent horrors of the French revolution.

No matter how much the first impression might lead to it, criminal guilt on his part cannot be deduced either from his position as Reich Minister for the occupied Eastern territories. As stated already, the "Minister in charge" cannot be held responsible without more ado for criminal acts committed in the sphere of his occupations or his territory. Criminal responsibility according to the Penal Code, par. 357, exists only if an official knowingly assents to the criminal actions of his subordinates, and if—the commentary furnishes the details—the superior is in a position to prevent the action.

I should like to take up the question of his responsibility on the grounds of the documents submitted:

1. *The action taken against Jews at Sluzk (Doc. 1104–PS, USA–483).* On October 27, 1941, a horrible slaughtering of Jews took place in Sluzk through the 4 companies of a Police battalion, because the Commander received an order from his superior to clear the city of all Jews, without exception. The regional Commissioner immediately made vigorous protests and demanded that the action be stopped at once. With pointed revolver he kept the police officer in check. He reported to the Commissioner General Kube of White Ruthenia at Minsk, and the latter suggested to Reich Commissioner Lohse that the officers implicated be punished for the "unheard of butchery." The latter reported to the East Reich Ministry with the request that measures be taken at once in higher places. The RMfdbO. sent the entire report to Heydrich, Chief of the Security Police and of the SD, requesting further instructions. Due to an ingenious system according to which the

police was not responsible to the competent administrative chief, and was not even obliged to report, Rosenberg could not take any further steps either in this or in other similar cases. He was not above the police and could only hope that the transfer of the report to Heydrich would be sufficient to stop what he considered to be regional excesses of the police. It can be seen from the indignation of all the administrative offices over the reported incidents, that none of them knew anything about them, that it was no question of excesses, but of an action ordered by Heydrich and Himmler. And when Heydrich and Himmler declined responsibility Rosenberg could not suspect anything either.

2. From October 1941 too comes document No. 3663–PS in which the "Reich Minister for the occupied Eastern territories", signed "for Dr. Leibrandt" calls for a report by the Reich Commissioner Ostland because a complaint has been made by the Chief Office of Reich Security that the Reich Commissioner Ostland has prohibited Jewish executions in Libau. To this the addressee replied: "I prohibited the execution of Jews in Libau, because there was no justification for the way in which they were carried out." This is followed by a request for further instructions. Of this document, which is signed by the departmental chief Leibrandt, and which in no way points to any knowledge on the part of the defendant Rosenberg, the following careful statement may be said in brief: It is not conceived as a reproach by the Reich Minister East, because the executions of Jews were not continued, but it simply points to the transfer of a complaint to the Reich security chief with a request to report. It is to be presumed that the reason for the complaint was that the Reich Commissioner Ostland encroached on the competency of the Reich Security Chief, and the demand for a report was supposedly issued in this sense. In the letter of December 18, 1941 the Reich Minister East also signed "For Braeutigam" asking the Reich Commissioner Ostland to settle directly any questions which occurred with the higher SS and Police leaders.

3. Document No. 3428–PS concerns a letter of the General Commissioner for White Ruthenia to the Reich Commissioner for the East. It is a shocking document about the mass extermination of Jews in White Ruthenia; however, there is nothing of interest in it for the case against Rosenberg, because the horrible events may be attributed to him only if he knew of them and neglecting his duty failed to intervene. There is no actual proof to go by for a supposition of such knowledge.

The claim that these documents were found in Rosenberg's possession is not in accordance with the actual facts for they show the Reich Commissioner in Riga as the addressee. To identify the sign *R.* as Rosenberg's initial because the Prosecution obviously was more than doubtful about Rosenberg's knowledge of matters, turned out to be a failure too.

4. In the "Aktennotiz for the Fuehrer of 18/12/1941" (*Doc. 001–PS, USA 282*) the defendant suggested the following, which I must quote literally: "The outrages against members of the German Wehrmacht have not stopped, but have gone on. It looks as though there were an obvious plan to disturb German-French co-operation, to force Germany to take measures of retaliation thereby bringing about a new defensive attitude on the part of the French against Germany. My suggestion to the Fuehrer is that instead of killing 100 Frenchmen now, he should have 100 or more Jewish bankers, lawyers etc. shot".

It is not my task here to say how far it is admissible to shoot hostages, but one thing is certain, that Rosenberg was convinced such a measure was admissible. But in that case his suggestion must be considered in that light, and can by no means be judged as an independent incitement to murder.

The suggestion, however, had no results; in his reply of December 31, 1941, Lammers acting on the Fuehrer's order, merely referred to the suggestion of utilizing the furniture and fittings from Jewish houses, and not to the shooting of hostages. (Doc. 1015–PS). Rosenberg made no more reference to it either.

At this point I should like to recall that Rosenberg testified as a witness that on one occasion a regional commissioner in the East was sentenced to death for having extorted valuables from a Jewish family, and that the sentence had been carried out. Please do not consider it a bad argument of defense when I say: Does that not prove that Rosenberg loathed criminal acts against the Jews?

5. Document R–135, USSR–289 refers to the report of the General Commissioner of White Ruthenia, in Minsk, dated June 1, 1943, on the subject of what happened in the prison of Minsk as regards gold fillings. This was addressed to the Reich Commissioner of Ostland, who forwarded the report on the 18th of June 1943 with his marked anger.

At his hearing before the Tribunal on April 16, 1946, the defendant already made a statement on this point, and I would like to repeat this briefly now: He had returned on the 22-6-1943 from an official trip to the Ukraine and found a pile of notices about conferences, a number of letters and above all the Fuehrer decree from the middle of June 1943, in which Rosenberg was instructed to limit himself to the principles of legislation of the law, and not to bother about the details. Rosenberg did not read the letter, but he has to surmise—he cannot remember it—that the letter was explained to him by his office, and presumably in the course of the reading he was informed of many documents and learned that there was again serious trouble between the Police and Civilian Administration, and it is probable that Rosenberg said: turn that over for investigation to Gauleiter Meyer or to the Police officer of liaison. If it were not so the terrible details would certainly have remained in Rosenberg's memory.

Nobody doubts for a moment that the horrible crimes shown in the documents, and all the other frightful things not covered in the documents but which actually happened, call for atonement, nobody is in doubt that not only the lesser tormentors acting on higher orders must be punished but also and above all those who issued the orders and those responsible for the crimes. Rosenberg did not issue an order to murder the Jews, so much is clear, but is he in spite of this responsible for the frightful murderers?

The defendant has left no trace in handwriting on any of the murder documents, in any case it could not be determined that he knew anything about what went on. But can we condemn Rosenberg on the basis of his supposed and probable knowledge? Rosenberg has by no means the intention of playing a false and cowardly game of hide-and-seek behind his advisers and subordinates, but let us remember with what cunning the so-called executions of the Jews were kept secret not only from the public but even from Hitler's most important colleagues! Is it not possible and, even credible, that they were playing a game of hide-and-seek and especially with Rosenberg? The thoughts and intentions of none of the other NSDAP leaders were revealed so openly and clearly to all the world as those of the editor Rosenberg in particular, of no other could one be so sure that he would turn with indignation from the cruel, inhuman acts.

On the other hand, let us go a step further and assume that Rosenberg had full knowledge of this, the greatest crime of all—it is not proved but one could imagine and surmise it—is he then responsible, too? Peculiar, even subtle, too, as we well know, was the departmental authority and the responsibility which went with it in the Eastern countries. The entire complex of the police force had been taken from Rosenberg's sphere of influence, the highest instance was Himmler and under him Heydrich. Of their orders and measures Rosenberg had no knowledge and no suspicion as a rule. The lower strata of police chiefs and police organs were in effect subordinate and responsible to their police superiors and no one else. It was quite immaterial whether or not Rosenberg knew anything of the measures taken by the police, he could do as little about it as any other of his fellow citizens in the third Reich. One might say yes, he could have remonstrated with Himmler or Hitler, he could have given up his position. Of course, he could have done so. The point, however is not whether he could have done it, the question is, would he have achieved anything by doing it. That is to say, whether he could have prevented the executions. For only in such a case could his responsibility be affirmed on the ground of his failure to do so, and only in such a case could one speak of causality without which criminal responsibility is unthinkable.

One can make further claims, still under the assumption of Rosenberg's knowledge of matters: That Rosenberg could at least have stepped in against the Reich Commissioners, who were obviously involved in these matters. We know that the administrative organization and the dividing up of supreme authority in the East were vague to say the least. The Reich Commissioners were sovereign masters in their own territory, they had the final say in the shooting of hostages and in other retaliatory measures of far-reaching consequence. And what was the actual extent of their authority? In case the Reich Commissioner was dissatisfied with Rosenberg — and he mostly was dissatisfied — he went to Hitler.

Does anyone really believe that if Rosenberg had different opinions from these of Koch as regards the execution of the Jews, he would have been upheld by Hitler if he had gone to him? In this again, there is a lack of that causality which is indispensable for a legal indictment.

Operational Staff Rosenberg

1. *Prosecution.* No less than three prosecutors have taken stand in this trial against Rosenberg and have accused him of having systematically stolen objects of art and science on a large scale in the East and West (Storey 18.12.45, Prot.P.1408; Gerthofer February 6, 46 Prot.P.3945; Smirnov Feb.15,46 and Feb.21,46.) First I must take exception to some obvious exaggerations and injustices, e.g. the assertion that the activities of the special staff (Sonderstab) in the West extended to public and private property without distinction. (Prot.p.3951), that the objects of art Germany appropriated, amount to more than the treasures of the Metropolitan Museum in New York, of the British Museum in London, of the Louvre in Paris and of the Tretjakow gallery all together (Prot.P.1423). Further, I must declare the statement incorrect that the "Looting program" of Rosenberg was intended

to rob the occupied countries of their entire centuries-old possessions of art and science. Finally, the Prosecution contrasts Rosenberg's actions to the looting of art-treasures in former wars, it says that while egotism, conceit, taste and personal inclination were the underlying motives of such looting, the National-Socialists in the first place had the criminal intention of storing up reserves of things of value (Prot. p. 3965). I think it unnecessary to go back over the looting of art-treasures in former times as far as Napoleon, because the concepts of international law and regulations have changed in the meantime, but I should like to mention two things: (a) How many of the most famous objects of art in the most famous galleries of the world got there through the channels of war and how many got there in a peaceful way? (b) I can accept the fact that the Prosecution denies Rosenberg any delight in art, or joy in the possession of treasures of art as a possible motive for his actions, because Rosenberg was no pirate of art, no thief. He had no intention of appropriating the objects of art for himself or for someone else.

What were the actual facts?

Rosenberg's operative staff was active in the east and in the west, it had two tasks: (1) to search libraries, archives etc. for material, suitable for the "High School" of the party, which had been planned, to confiscate this material and take it away for the purpose of research, (2) to seize objects of cultural value that were in possession of or which belonged to Jews, or which had no owner or were of a doubtful origin. The Prosecution says: The true and only motive, the true and only purpose of this "seizure" was robbery and looting. There could be no question of intentions of "mere safeguarding".

2. *In the East.* On the 20th of August 1941, Rosenberg wrote to the Reich Commissioner Ostland that he wished distinctly to prohibit the transfer of any kind of art treasure from any place whatsoever without the approval of the Reich Commissioner (Doc. No. 1015–C–PS). On the 30th of September 1942, (Doc. 1015–N–PS) an order was issued by the High Command of the Armed Forces in agreement with Rosenberg, to the following effect:

"Apart from exceptional cases when it is urgent to safeguard objects of cultural value which are in danger, it is desired that for the time being such objects be left where they are." Further, it says: The troops and all military service posts within the operational area are invariably directed to spare valuable cultural monuments as far as possible and to prevent their destruction or damage." In the report of "Special Staff for Plastic Arts" Work report for the period October 1940 to July 1944 (Doc. No. 1015B—

PS, RF–1323) it says that in the occupied eastern territories the activities of the Special Staff for Plastic Arts were restricted to the scientific and photographic seizure of official collections, and that the safeguarding and protection of these was carried out in cooperation with the military and civilian service posts; it further says that in the course of vacating the territories a few hundred valuable icons and paintings, etc. were saved and with the cooperation of individual army groups were brought to a place of hiding in the Reich. Finally, on the 12th of June 1942, Rosenberg sent out the following decree in a circular letter to the highest Reich authorities. "In the occupied eastern territories a number of service posts and individual people are occupied with the salvaging of objects of cultural value. They work from various angles and independent of each other. It is absolutely essential for the administration of these territories that a survey be made of the existing objects of cultural value. Furthermore, it must be seen to that as a general rule, they be left where they are for the time being. To this end I have set up a central post for special discernment in my Ministry to lay hold of and salvage cultural values in the East."

Rosenberg, as can be proved, proceeded from the point of view that objects of cultural value must remain in the country, and only through the retreat of the German troops were few hundred valuable icons and paintings brought into Germany.

In time of war objects of cultural value, both mobile and immobile, are as exposed to the danger of destruction as are any other values. Rosenberg put a stop to an unnecessary destruction, theft and removal inasmuch as he centralized the safe-guarding of objects of cultural value and had all necessary action taken through his operational staff in the east and west. (See e.g. Abels' report on the library at Minsk 076–PS, USSR–375). It is quite in accordance with the conception of international law (see Scholz, Private property in occupied and unoccupied enemy country, Berlin 1919, page 36) that care should be taken on the part of the occupiers not only to protect but to safeguard and salvage protected objects of art, as far as the war situation permits; yes, it is even considered a cultural duty for the occupier to remove particularly valuable objects of art from the zone of fire and to place them in safety as far as possible; under circumstances, the concept of international law may even make it the right and duty of the occupier to bring into his own country for reasons of salvage objects which are of special scientific and artistic value. This is not an inadmissible seizure (article 56 par2. LKO.), because the latter term could only apply to acts which are hostile to culture and not to acts which are friendly to culture. (see Scholz on p. 37).

Finally, I want to refer to Document 1109–PS, a report according to which scientific institutes that had been saved were ready to be taken back to the Ukraine immediately after the hoped-for reentry of the troops. I consider it completely impossible to read anything about looting into this clear text.

Certainly, in the East great quantities of cultural objects of considerable value were destroyed by direct military action or by wanton destruction or looting. It would be a fundamental misjudging of the true facts of the case and a great injustice if these losses should be charged to the account of the Rosenberg Einsatzstab (task force) and its chief, for his efforts were in the opposite direction.

3. *In the West.* In the West (see Robert Scholz's testimony of 19 May 1946, Document No. Ro. 41) the case was different, but, in my opinion, here also the defendant cannot be charged with looting and robbing objects of art. When, in the summer of 1940, the Parisians, with the exception of the Jews, had once more returned, somebody conceived the idea of searching the now ownerless apartments, houses and castles for books and libraries and of taking what was interesting of this scientific material to Germany. From various branches of the Wehrmacht (Armed Forces) the report came that especially in Jewish castles there were collections of art which one could not guarantee would remain intact in case of a long occupation. Thereupon, Rosenberg made the proposal that his Einsatzstab (task force) be allowed to direct its attention at objects of art and to take care of them, which was then ordered by Hitler. What did the task force do with these objects of art? It set up an accurate card index containing the name of the particular owner of each picture, photographed the objects of art, scientifically appraised them, repaired them expertly insofar as was necessary, packed them carefully and shipped them to the Bavarian castles of Neuschwanstein and Chiemsee. Because of the dangers of air raids they were then stored in an old Austrian mine. Rosenberg attached great importance to keeping the objects cared for by the Einsatzstab separately and not mixed in with the great purchases which Hitler made for the proposed gallery in Linz.

Was that looting, robbery, theft? Looting is the indiscriminate and wanton carrying off of objects in situations of general distress and danger, robbery is carrying off by force, theft carrying off without force. In all cases the intent must exist to appropriate the object illegally for oneself or somebody else. What intent did

Rosenberg have? He has never denied that he and his co-workers had hopes of the pictures remaining in Germany, perhaps as compensation or as security for the peace negotiations, but his intent was only directed at confiscating and safeguarding the objects and as has been proved, the question of what should be done with the confiscated items was left open until the end and no decision made on it. It is absolutely certain that Rosenberg did not have the intention of appropriating the things for himself or anybody else. If Rosenberg had been a plunderer of objects of art, he certainly would not have made notations concerning date and place of confiscation and name of the owner. As a precaution, however, I should also like to point out that because of the flight of their owners the objects were ownerless and that the question of the lack of owner and the question of the legality of their acquisition by Rosenberg cannot be judged by normal circumstances, but must be judged according to the extraordinary circumstances of the war. If the Prosecution claims that public and private objects of art were stolen at random, I should like to reply that statement that only Jewish possessions, and indeed as mentioned ownerless objects were confiscated, above all it is not true that state-owned property was also touched. Finally, he did not act on his own responsibility, but acted in carrying out a state order and finally I want to ask that the fact be not ignored that Rosenberg acted without any egotistic motives; not a single picture passed into his private possession, he did not gain a single mark from this transaction which was worth millions and after all, the entire lot of artistic and cultural property has been found again.

Goering supported the work of the Einsatzstab and, as he admits "diverted" ("abgezweigt") some objects for his own purposes with the Fuehrer's approval. This disturbed Rosenberg because the Einsatzstab was in his name and he declared that as a matter of principle he did not want to give anything even to the museums, that his task was purely one of registration and safeguarding, that the Fuehrer should have the final decision on these works of art. Rosenberg could not undertake anything against Goering, but he ordered his deputy Robert Scholz at least to make an accurate inventory of what was given to Goering and to have the latter sign a receipt, which Goering also did. And so it most certainly cannot be proven that Rosenberg had the intention of illegally appropriating the objects of art for himself or somebody else. Furthermore, Robert Scholz confirmed that Rosenberg also forbade all his assistants to acquire any object of art or culture, even by virtue of an official appraisal (Doc. Ro. 41).

The Prosecution says that with the Rosenberg Einsatzstab a gang of Vandals broke into the European house of art in order to plunder it in a barbarous way. If one thinks of the tremendous work of drawing up an inventory, of cataloguing, restoration and scientific appraisal and if one finally bears in mind that all these treasures were most carefully stored away and certainly came through the war better than would have been the case if the German authorities had not taken care of them. I believe that objectively speaking one can use any term but that of "Vandalism".

4. *The Furniture Operation ("Moebelaktion").* Rosenberg is also especially charged with looting furniture. He is alleged to have robbed 79,000 Jewish-owned apartments, among them 38,000 in Paris, of their contents and to have taken the loot to Germany. Unquestionably, these measures were taken for the benefit of air-raid victims; in the cities which had been destroyed by air warfare new apartments were built for the homeless.

It was in line with the National-Socialist mentality and must certainly be morally condemned that the confiscation was limited to Jewish property. The essential question, however, is whether the confiscation was at all legal. In all my statements, I have avoided—and I do not wish to do it at this point, either— Trying to excuse a war legal position with a state of military emergency, for as an expert international law states "the state of emergency is the lever by means of which the entire body of martial law can be torn off its hinges." But in this case was not national and military necessity the ground for justification, did not air warfare bring "intense and general distress" to Germany? One might object: "The distress could have been ended by unconditional surrender". In my opinion, however, by this reference to unconditional surrender, the abandonment by the Reich of its own existence and independence and its own vital interests, this ground of justification cannot be taken from the defendant. The appropriation of enemy property took place in application of a right of requisitioning which was extended beyond the legal maxims of martial law and justified by the state of emergency. I venture to assert that this procedure of confiscating furniture, in view of the devastating effects of the air warfare against Germany was not contradictory to "the customs among civilized peoples", "the laws of humanity", and "the demands of the public conscience" (Marten's clause in the preamble of the agreement concerning the laws and customs of land warfare; see Scholz in the aforementioned book, page 173).

The Norway Operation

The prosecution characterizes Rosenberg and Raeder as the most energetic conspirators of the Norway Operation and later in the same matter calls Rosenberg a "dealer in high treason". The opinion of the prosecution and also the supposition of the present Norwegian Government (Norwegian report of 3 October 1945, Doc. TC–56) are obviously that the Party's foreign office (Aussenpolitisches Amt) of which Rosenberg was the head, and Quisling had plotted the war against Norway in a mutual conspiracy. I believe that of all the charges against Rosenberg hitherto dealt with none has less foundation than this one. On the basis of the few documents which have been submitted to the court, in my opinion the case could doubtless be cleared up in favor of the defendant.

There was a Party "foreign office" (Aussenpolitisches Amt) (A.P.A.) which had the task of informing foreign visitors about the National-Socialist movement, of referring any possible suggestions to the official offices, and otherwise of functioning as a central office of the Party for questions of foreign policy. The special interest, and I may perhaps say the special sympathy of the leading men of the Party and the State was directed at the Nordic countries; it was in this direction that the A.P.A. placed the main emphasis on the field of cultural policy. The already existing Nordische Gesellschaft (Nordic Society) was expanded, the birthdays of great Nordic scientists and artists were observed in Germany, a great Nordic music festival was held, etc. The relations first took on a really political note with the appearance of Quisling whom Rosenberg had seen for the first time in 1933 and who then in 1939—i.e. six years later—looked up Rosenberg again after the convention of the Nordic Society in Luebeck; the former spoke of the danger of European entanglements and expressed the fear that Norway was in danger of being drawn into them. He then feared above all a partitioning of his country in such a manner that the Soviet Union would occupy the northern part and England the southern part of Norway.

Quisling again appeared before Rosenberg in Berlin in December 1939. The latter arranged for a conference with the Fuehrer. Hitler declared that he would by far prefer to have Norway remain completely neutral and that he did not intend to extend the theater of war and involve more nations in the conflict, but he would know how to defend himself against a further isolation of, and further threats against, Germany. In order to counteract the increasing activity of enemy propaganda, Quisling was promised financial support of his movement, which was based on the Pan-Germanic idea.

The military treatment of the questions now taken up was assigned to a special military staff; Rosenberg was to deal with the political aspect and he appointed his assistant Scheidt to maintain liaison between him and Quisling. Hagelin, a Norwegian confidential agent of Quisling's, in January 1940 gave Rosenberg some more disturbing reports on the feared violation of neutrality by the Norwegian government and Rosenberg passed them on to Hitler. After the "Altmark" incident, Hagelin, who moved in Norwegian government circles, intensified his warnings. The Allies had already begun to study the Norwegian seaports for disembarkation and transportation possibilities; in any case the Norwegian government would be satisfied with protests on paper and Quisling sent the message that any delay in undertaking a counter-action would mean an exceptional risk. Rosenberg again handed the reports immediately to Hitler. If he had not done so that would actually have been treason to his country. The German counter-blow followed on 9-4-1940 and Rosenberg learned about it from the radio and newspaper like any ordinary citizen. After his above-mentioned report which he made in the line of duty, Rosenberg did not participate in either diplomatic or military preparations.

Should there still be any doubt that Rosenberg was only an agent who forwarded information to Hitler and not an instigator, conspirator or traitor in the Norwegian case, I should like to refer to two documents. First, to Document C–65, Rosenberg's file notes concerning Quisling's visit. Obviously, it is the information on Quisling which had been requested by Hitler of Rosenberg. If Rosenberg had been on close terms with Quisling, he certainly would have wanted to inform Hitler about it. Rosenberg had only heard of a fantastic and impracticable plan of Quisling's for a coup d'etat (occupation of important central offices in Oslo by sudden action, supported by specially selected Norwegians who had been trained in Germany, then having the German fleet called in by a newly-formed Norwegian government). However, an earlier report of Quisling appeared less fantastic to Rosenberg; according to which—names were given—officers of the Western powers travelled through Norway as consular officials, ascertained the depth of the water in ports of disembarkation and made inquiries into the cross-sections and heights of railway tunnels.

This was the true and only reason for everything Rosenberg did in the Norwegian matter. The second document is the report concerning: "The Political Preparation of the Norway-Operation" (Doc. 004–PS), a report from Rosenberg to Hess of 17 June 1940; in this inter-departmental report also there is nothing which deviates from Rosenberg's own trustworthy statement and which would let him appear as an instigator of war and a person guilty of high treason.

Rosenberg was not called in at any political or military discussion concerning Norway. Thus, what criminal act did Rosenberg commit? Was it criminal that he tried "to gain influence in Norway" (TC–56) or that with his knowledge subsidies were given to Quisling by the Foreign Office? Finally, I should also like to point out that later on, after the operation had succeeded, Rosenberg in no way was entrusted with an office or function with regard to Norway, that even the appointment of a Reich Commissioner for Norway was carried out without consulting him.

In connection with this I shall briefly mention the case of the Rumanian minister Goga. The latter visited Rosenberg who gave a friendly reception to a friend of Germany. The fact that in the matter in merging of the followers of Goga and Professor Cuza, Rosenberg recommended to the latter that he give up the radical anti-Jewish points of his program, cannot seriously be regarded as evidence against him. Otherwise, Rosenberg did not interfere with the purely Rumanian party which bore the name "Christian-National Party" and was strictly loyal toward the supreme head of the state and proceeded along purely legal channels. After the Rumanian king dismissed Goga, whether as a result of the demands of the British and French ministers or for other reasons, further relations ceased. That was in 1937. Antonescu did not know Rosenberg and had no relations whatsoever with him.

I remember moreover that the world does not object when, for instance, the representatives of social-democratic parties from all countries meet at international congresses. How can we blame a German who receives foreigners who are well disposed to Germany and assures them of his sympathy.

Persecution of the Church

The prosecution maintains that Rosenberg together with Bormann issued the orders for religious persecutions and induced others to participate in those persecutions. However, not a single order of this kind is known. There were presented only writings of Bormann, partly to Rosenberg, partly to others, from which no charges against Rosenberg can be drawn. On the contrary, Rosenberg was repeatedly reproached as once when in the presence of Hitler he praised a book by Reichsbishop Mueller (Doc. 100–PS, USA 691). Another time, when Rosenberg gave Reichsbishop Mueller instructions to work out directives for thoughts regarding religious instruction in schools (Doc. 098–PS, USA 350). Once again when Rosenberg promoted a strictly Christian piece of writing by General von Rabenau.

As a witness Rosenberg declared himself (Prot.p.1874) that he always declined propaganda advocating the withdrawal from the Church and never called for state and police measures against his clerical and scientific opponents, and particularly he never used the police for suppressing those who were opponents of his "Myth." In December 1941 he had issued, as Reich Minister for the occupied Eastern territories, an edict for church toleration (Doc. 1517–PS, and 294–PS, USA–185) ; with arrests, the deportation of priests, and persercution of the Church Rosenberg had nothing to do. He had no part either in the negotiations with the Vatican over the Concordat or in the assignment of the Protestant Reich Bishop: but neither did he take any part in measures which were hostile to the Church, and which were later carried out by the police. He never participated in any other administrative or legislative anti-clerical measures.

In my opinion it is impossible, for lack of documentary evidence, to construe from what Rosenberg thought and said about religious and philosophical matters that he conspired towards a political suppression of religion. The only document (130–PS, USA–672) pointing in this direction was withdrawn by the prosecution itself, before I saw myself obliged to draw attention to it as a pamphlet drawn up against Rosenberg. His book "The myth of the 20th century" which is allegedly written for the reshaping of confessions in the spirit of a German Christianity, is moreover chiefly addressed to those who have already broken with the Church. "No consciously responsible German", says Rosenberg on one occasion in it, "should suggest withdrawal from the Churches to those, who are still faithful members of them." (Doc. Ro 7, Doc. Book I, p.122). Another time: "May science never have the power to dethrone true religion" (See the same page 125). His writings are not addressed to the faithful church-goers of today in order to hinder them in the course of their spiritual life, but to those who have already discarded their faith. (Doc. Ro 7, Doc. Book I, p.125).

In his speeches he declared that the Party is not entitled to establish norms in metaphysical matters which deny immortality etc. Having been assigned to supervise ideological education he said explicitly in his Berlin speech of 22.2.1934: "No National-Socialist is allowed to engage in religious discussions while wearing the uniform of his movement," and he declared at the same time that all well-disposed persons should strive for a pacification of the entire political and spiritual life in Germany (Ro 7a, Doc. Book, p. 130). That in this respect, too, things developed on different lines is not due to will and influence of Rosenberg.

Moreover, I need to make only a brief allusion to the fact, that it is a question of the 1000 year-old problem of relations between the clerical and so-called worldly powers: The struggle of emperors, kings and popes in the middle ages; the French revolution with the shooting of priests; Bismarck's clerical controversy; the secular legislation of the French republic under Combes. All these were things, which from the standpoint of the Church are persecutions, but from the standpoint of states and nations are termed necessary measures.

Ideology and world politics

Ideology and Education have been nothing but a means of obtaining power and consolidating it. Uniformity of thinking has played an important part in the program of the conspiracy. The formation of the Wehrmacht has only been possible in conjunction with the ideological education of the nation and party, so says the prosecution (Brudno, on 9-1-1946, Prot. p.2253 ff.) And continuing its attacks against Rosenberg, the prosecution continues: If Rosenberg's ideas formed the foundation of the National-Socialist movement, Rosenberg's contribution in formulating and spreading the National-Socialist ideology gave foundation to the conspiracy by shaping its "philosophical technique."

I think that one will have to take care, in judging Rosenberg's case, not to yield to certain primitive ways of thinking and become a victim to them. First of all an exaggeration of the conception of ideology and to an imprecise use of that conception. At best it was a political philosophy, which went hand in hand with Hitler's political measures and which Hitler himself preached in his book "Mein Kampf", but it was not an "ideology" in an all-embracing sense. It is true that National-Socialism endeavored to create a spiritual philosophy and world ideology of its own, but it had not reached that stage yet. Rosenberg's book "The myth of the 20th century" is an attempt in that direction, being a personal confession, without any suggestion of political measures. So his philosophy cannot have formed the ideological basis of National-Socialism. Besides this there is a total lack of proof that a straight spiritual line, a clear spiritual causal connection exists between the conceptions of Rosenberg and the alleged and actual crimes. If one goes to the trouble of looking through the book "Myth", one sees immediately that though there is some philosophizing in the National-Socialist way, it would be however pure fiction to affirm that there is any dogmatic formulation of an aggressive program in this book and that it is a foundation for the activities of the responsible leaders of the German Reich in the world war.

Another mistake of National-Socialism was perhaps the boundless unification and simplification; people were made uniform, thinking was made uniform, only one uniform type of German was left. Presumably there was also only one National-Socialist way of thinking and only one National-Socialist ideology. But in spite of this, as we see today, the leaders were frequently of different opinion in essential questions, I will recall the mere questions of Church and Christianity, and that of the policy in the East.

Here in the Tribunal, too, there seems to be a danger of accepting this way of thinking, of observing everything through the spectacles of uniformity and of saying: One idea, one philosophy, one responsibility, one crime, one penalty. Such simplification apart from its primitive nature would surely be a great injustice toward the defendant Rosenberg.

Finally, when one hears how the prosecuting authorities attack "German Christianity", the "Heathenish Bloodmyth", pillorying Rosenberg's expression, "the Nordic blood is the very mystery, which superseded and overpowered the old sacraments", one may close one's eyes for a moment and picture oneself at a session of the Inquisition in the Middle Ages where they are about to sentence Rosenberg as a heretic to the stake. Surely nothing can be farther from the Tribunal's mind, than to harbor thoughts of intolerance, as here in spite of all attempts by some of the prosecutors, to affirm that it is not ideologies but crimes which are being debated here.

In the defendant Rosenberg's case we are debating: whether by his teachings he did wilfully prepare and further a crime. The prosecuting authorities have brought forth arguments to prove this, but have not done so, and I can prove the opposite merely by pointing out Rosenberg's activities in the East. Had he been the bearer and apostle of a criminal idea, he would have had an opportunity, such as no criminal has ever had yet in world history, to indulge in criminal activities. I have stated explicitly that in his case it was just the opposite. So when the bearer and apostle of an idea, himself has the greatest of opportunities and yet behaves morally, then his teachings cannot be criminal and immoral either, and above all he cannot be punished then as a criminal on the ground of his teachings. What criminally degenerate persons practised as alleged National-Socialism cannot be laid to the charge of Rosenberg. Moreover, Rosenberg's speeches in three tomes, which express what he taught during the course of 8 years bear witness to the honorable nature of his endeavors.

Thus if we give up the false conception of uniformity: One party, one philosophy, one ideology, one crime, then in view of the indisputable fact that Rosenberg himself never pursued a policy of extermination, destruction and enslavement in the East, we shall have to admit that the facts of the terrible central executive orders and of Rosenberg's philosophy are not identical and on these grounds alone the conclusions of the prosecuting authorities are invalid.

Karl Marx teaches that historical events, and political social reality are conditioned by the more casual play of materialistic forces. Whether Marx acknowledges the independent influence of man and ideas in history is at least doubtful. On the contrary Rosenberg stresses emphatically the influence and the necessity of the highest ideas in the history of peoples. But Rosenberg does not overlook the fact that every event in history is the result of a totality of acting forces. The will, the passions and the intelligence of the people involved work together to form a historical process which cannot be calculated in human terms. It has already been pointed out, that just as little as Voltaire's and Rousseau's ideas can be recognized as the causes of the French revolution, and the slogans of liberty, equality, and fraternity be taken as the cause of the Jacobine terror, as little as one can say Mirabeau and Sieze had wanted or plotted such blood-thirstiness, just as little can one ascribe to Rosenberg as moral or even criminal guilt what became of National-Socialism during its development through the decades. In other words, I believe it is as unjust as it is unhistorical to ascribe today in retrospective the negative aspects of National-Socialism which were connected with the terrible collapse to a plan which had been desired from the beginning, a plan which also originated in Rosenberg's ideas.

Therefore, in considering Rosenberg's work the mistake of a standardization which does not correspond to reality is added to the further mistake of mechanization, there is neither a mechanical man nor mechanical history; and, finally, the construction of the indictment is also an absolutely negative one, it views the defendant from the standpoint of political polemics and is impressed by the excitement of people in these most excited times. I must briefly take exception to this distortion of the defendant's mental traits.

The mental state of the period after the first world war and even of the preceding period which gave birth to the defendant's ideas are known to all of us only too well: The mental-psychic uprooting of man by the technical age, his hunger and thirst for a new spirit and a new soul; "liberty" was the slogan and "a new beginning" the impulse which directed the will of youth. Its longing and enthusiasm were aimed at nature. The thoughts and wishes of this generation were led into political paths by the contrast between rich and poor, which youth considered unjust and which youth sought to bridge through Socialism and the fellowship of the people; in Germany the development on political lines was further enhanced by the national misfortune of 1918/19 and the Treaty of Versailles; which was likewise felt to be unjust. The idea of a future building of German history through the union of nationalism and socialism, glowed unconsciously in the hearts of millions as the undisputed, tremendous success of National-Socialism proves. The psychic foundation was the will for self-preservation and love for one's fellow countrymen and for the people itself, which had already had to suffer so much torment and misery in history.

The will for self-preservation and love for one's own people together with the whole complex of National-Socialist ideas then developed in an inexplicable manner into a furious conflagration, the most primitive considerations of common sense were eliminated just as in a delirium; in complete delusion everything was put at stake and lost.

The questions his conscience put to him however and which he asked himself time and time again, are whether he could have done more for what he thought and upheld as just and worthy, where he neglected essential things, where he fell short of requirements, what negative events, in so far as he had knowledge of them, he should have attended to with more effort. Can such questions which every person asks when he is crushed by disaster, be considered as evidence for his objective guilt? I do not think so. On 17 January 1946 (transcript p.2765/66) the French chief prosecutor, M. de Menthon stated the following which I quote: "We are rather facing systematic criminality which directly and necessarily derives from a monstrous doctrine with the full will of the leaders of Nazi-Germany. The crime against peace which was undertaken immediately is derived from the National-Socialist doctrine." To refute this assertion I must briefly present this doctrine.

I have classified the National-Socialist ideology—in full accord with scientific opinions—under the so-called new-romanticism. This tendency of the time which was grounded in fate and the necessities of history had gone through the whole civilized world since the turn of the century as a reaction against rationalism and the technical age. It differs from the old romanticism in that it adopts the naturalistic and biological consideration of man and history.

It is borne up by a confident faith in the value and meaning of life and the whole of reality. It does not glorify feeling and the intellect, but the innermost workings of man, his heart, will, and faith. This philosophy receives its National-Socialist stamp through the emphasis which is placed upon the mysterious importance of peoples and races for all human experience and work. It is in the people, in the common possession of blood, history, and culture that we find the real roots of strength. Only by participating in the movements of a people and its strength does the individual serve himself and his generation.

Rosenberg's scientific contribution to the racial ("voelkisch") ideology consists in his description of the rise and fall of great historical figures, who were born of races and peoples who set up definite standards in all fields of language, custom, art, religion, philosophy, and politics. According to Rosenberg the efforts of the 20th century to establish a form for itself are a struggle for the independence of the human personality. In Rosenberg's opinion then essence is the consciousness of honor. The myth of national honor is at the same time the myth of blood and race; the race produces and supports the maximum value of honor. Therefore, the struggle for the maximum value of honor is also a spiritual struggle with other systems and their maximum values. Thus intuition stands against intuition, will against will. Rosenberg expresses this thought in the following manner ("Myth", Introduction, pp. 1 and 2): "History and the task of the future no longer means a struggle between classes, it will no longer be a struggle between church dogma and dogma, but the dispute between blood and blood, race and race, people and people. And this means: A struggle between psychic value and psychic value". Consequently, Rosenberg had, in any case, no ideas of genocide as Raphael Lemkin opines in "Axis Rule in Occupied Europe", page 81, where he ends the above quotation after the words "race and race, people and people", but he believed in a struggle between psychic value and psychic value, in other words, spiritual controversy.

I mention this spiritual tendency in order to explain the peculiar fact in National-Socialism that political considerations born of the intellect often the pathos of will and faith. In Rosenberg's case this danger did not appear so much. In making everything revolve around the "soil", i.e. the fatherland, and its history and peasantry as the life-growing forces from which spring the essence of a race, he remains in the sphere of life's realities. Perhaps, unaware of it himself, he was, nevertheless, borne upwards by the current.

A question arises, as to the effects this ideology had in political life?

It is clear that the emphasis on will and faith gave special weight to political demands. After the Treaty of Versailles the political demands of Germany were aimed at recovering freedom and equality among the peoples for her great power which was everywhere hemmed in. This had been the objective of German statesmen already before Hitler. The other great power had certain misgivings about recognizing Germany again as a great power. Rosenberg fought to do away with these misgivings. His weapon was his pen. The Tribunal allowed me to present in evidence an excerpt of Rosenberg's speeches and writings. I submitted it in my Document Book I, Volume 2. In view of the quantity of material and of my intention to submit only the most important matter, through lack of time, I depend on the court's being familiar with my document book. In the first place I wish to call attention to the effects which these books had on German youth. I may recall the witness von Schirach's testimony. I repeat verbally: "At conventions of youth-leaders at which he spoke once a year, Rosenberg chiefly chose educational, character-building subjects. I remember he spoke for instance on loneliness and comradeship, personality and honor etc. At these conventions of leaders he did not deliver speeches against Jews. As far as I remember, he did not touch either on the confessional problem of youth, in any case to the best of my memory. Mostly I heard him talk on such subjects as I have just mentioned." The attitude of youth was actually better than before the taking-over of power. Idleness, the root of all evil, had ceased and had been replaced by work, the fulfillment of duty, the aiming at ideals, patriotism and the will to go ahead. It was a fatality here, too, that through Hitler's policy these values were used in the wrong manner.

The charges by the prosecution that Rosenberg was the advocate of a conspiracy against peace, of racial hatred, the elimination of human rights, of tyranny, a rule of horror, violence and illegality, of a wild nationalism and militarism, of a German master race, I could already refute by pointing to the excerpts from the "Myth of the 20th Century" which the prosecution itself has submitted as evidence for the truth of its assertions. In reply to this, in order to refute this assertion by the prosecution I want to point in particular to the following facts:

To prove Rosenberg's honest struggle for a peaceful living together of the peoples I wish to refer to his speech in Rome in November 1933 before the Royal Academy (printed in "Blood and Honor", Doc. Ro.7b, p. 150). In his speech in Rome, Rosenberg pointed to the fateful significance of the four great powers and proclaimed, I quote his words: "Therefore he who strives in earnest to create a Europe which shall be an organic unit with a pronounced multiplicity of form and not merely a crude summation, must acknowledge the four great nationalisms as given to us by fate and must, therefore, seek to give fulfillment to the force radiating from their core. The destruction of one of these centers by any power would not result in a "Europe" but would bring about chaos in which the other centers of culture would also have to perish. Reversed: It is only the triumph of the radiations in those directions where the four great forces do not come into conflict with each other which would result in the most dynamic force of creative thinking and organic peace, not an explosive forced situation such as prevails today, but it would then guarantee the small nations more security than appears possible today in the struggle against elementary force."

To this line Rosenberg, as chief of the Foreign Office of the Party, remained true. Unfortunately, he could only work for it through his word. No witness could confirm in this court room that Rosenberg had any influence on the actual foreign policy, whether it was directed by Neurath, Ribbentrop, Goering or Hitler himself. Neither in the Austrian, nor in the Czech, nor in the Polish, nor in the Russian complex has his name been mentioned in connection with the charge of participation in aggressive wars. Everywhere he was placed before accomplished facts. In the war against the Soviet-Union he received his orders only when the war against Russia had already been declared an acute possibility. He did not stir up the Norwegian campaign, but passed on personal information in accordance to his duty.

Now, as regards Rosenberg's speeches and writings on the problem of general foreign politics he advocated the "Anschluss" (union) of the Austrians who had been forcibly excluded from the Reich as a demand born of the right to self-determination which had been proclaimed by the Allies themselves. The revision of Versailles was a postulate of justice against a violation of the treaty of 11 November 1918. To advocate a German Wehrmacht was, in view of the non-disarmament of the other powers, a defense of the solemnly promised equality of rights.

From the standpoint of justice—and this is what Adolf Hitler personally told Rosenberg—it is not the affair of other nations to especially champion the living rights of the German people but it is the duty of the German nation itself. For this purpose it needed to establish a firm unity, and to overcome the social strife which made everything unsafe, and it needed a Wehrmacht, and these things all together, would only then make the Reich ready for alliances again.

Those were the decisive factors, which guided Rosenberg.

I shall now take up the accusation of racial hatred. Rosenberg's opinions in regard to the race question were the result of racial research of international scientists. Rosenberg repeatedly asserts (I refer again to the opinions stated in Doc. Book I, Vol. 2) that the purpose of his racial political demands is not contempt of a race, but respect for it. "The leading moral idea of an approach to world history based on the laws of heredity belongs to our times and to our generation, being in full accord with the true spirit of the modern eugenics movement in regard to patriotism, i.e. the upholding and expansion of the spiritually, morally, intellectually and physically best hereditary forces for our fatherland; only in such way can we preserve our institutions for all future times." These words are the leading idea of his demands, though their originator was not Rosenberg, but Henry Fairfield Osborn, Professor at Columbia University who wrote them about the work of his colleague in science, Madis Grant: "The Decline of a Great Race". This research led long before the existence of the Third Reich to eugenic legislation in other countries, in particular to the American immigration law of 26 May 1924 which was aimed at a strong reduction of immigrants from Southern and Eastern Europe while favoring those the North and West of Europe.

For Rosenberg it was a question of spiritual strengthening and consolidation of the German nation, indeed of the Aryan race. He would like to have his ideology considered in that light, above all his "Myth of the 20th Century". His preaching of the significance of race in history did not call—I remark it again—for race contempt, but for consideration and respect of the race and he demanded the acknowledgment of the racial idea only of the German people, and not of other nations.

He considered the Aryan nations as the leading ones in history. And in so doing he somewhat underestimated the value of other races, as the Semitic ones, he, in his praise of Aryan races did not think of the German nation alone, but of the European nations in general. I point out his speech in Rome of November 1932.

I am keeping within the framework of historical truth in pointing to the fact that anti-Judaism is not an invention of National Socialism. For thousands of years the Jewish question has been the minority problem (Fremdenproblem) of the world. It has an irrational character which humanly cannot be understood. Rosenberg was a convinced anti-Semite, who in writing and speech gave expression to his convictions and their cause. I have already mentioned that even such different personalities as von Papen, von Neurath, Raeder still are of the opinion that the predominance of the Jewish element in the entire public life had reached such proportions that a change was bound to come. The concrete result of that predominance and the fact that the Jews in Germany when attacked knew how to repay in kind, sharpened the anti-Semitic fight before the accession to power (of the National Socialists).

I wanted to present to the Tribunal a selection of Jewish literary attacks on the national feelings at that time, but the Tribunal ruled it out as irrevelant; as these writings were not introduced as evidence I cannot speak about them. It is, however, an injustice to Rosenberg to assert that blind hatred of the Jewish race has driven him into that controversy. He had before his eyes concrete facts of the seditious activities of Jews.

It appeared as if the party program of placing Jews under a large scale law for aliens would be realized.

It is true that Goebbels at that time called for a day's boycott of Jewish stores. Rosenberg, however, declared in his speech of 28 June 1932 on the anniversary of the Versailles Treaty in the assembly hall of the Reichstag in the Kroll Opera: It was no longer necessary that in the capital of the Reich 74% of all lawyers should be Jews and that 80 to 90 percent of the physicians in Berlin hospitals should be Jewish. Some 30% of Jewish lawyers in Berlin would amply do. In his speech on the Parteitag in September 1933 Rosenberg stated in addition (I quote): "In the most chivalrous way the German government has excluded from the percentage stipulations those Jews, who have fought for Germany at the front or who have lost a son or a father in the war" (Doc. Ro. 7b supp., Doc. Book I, p.153a). In his speech at the Kroll Opera Rosenberg gave the reason for this measure, saying that an entire nation should not have been discriminated against, but that it was necessary for our younger German generation who for years had to starve or beg, to be able to obtain bread and work, too.

But despite his strong opposition to the Jews he did not want the "extermination" of Judaism, but advocated as the nearest goal the political expatriation of Jews, i.e. by placing them under a law and protection for aliens. In addition he granted to the Jews a percentage access to non-political professions which still by far exceeded the actual percentage Jews in the German population. Of course, his final goal was the total emigration of the Jews from Aryan nations. He had no understanding of what a great loss to the Aryan nations themselves such an emigration would be in cultural, economic, and political respects. But one must admit that he meant that such emigration would prove useful for the Jews themselves, first because they would be free from anti-Semitic attacks and then because in their own settlement they may live unhampered according to their own ways.

The dreadful development which the Jewish question took under Hitler, and which was justified by him as being a reaction against the policy pursued by the emigrants, was never more regretted than by Rosenberg himself, who blames himself for not having protested against the attitude of Hitler, Himmler and Goebbels, as much as he protested against Koch's influence in the Ukraine. Rosenberg also does not hesitate to admit that his suggestion to Hitler to shoot 100 Jews instead of 100 Frenchmen after the recurring murders of German soldiers was an injustice born under a momentary feeling—despite his belief in its formal admissibility—because from the purely human standpoint the real basis for such a suggestion was lacking, namely the active participation of those Jews. I am mentioning this event again, as it is the only instance when Rosenberg wanted retribution by the death of Jews. On the other hand one must insist with greatest emphasis that there is no proof of Rosenberg's being aware of the extermination of 5 million Jews. The prosecution is blaming him for making preparations for an anti-Semitic congress as late as 1944, which did not take place only because of the course of the war. What sense could such a congress have had when Rosenberg knew that the majority of the Jews in Europe had been already exterminated?

Rosenberg had no faith in democracy because it meant for Germany a split into numerous parties and a constant change of governments, making finally the formation of an efficient government impossible. Another reason for not having faith in democracy was that non-German democratic powers did not stand by their democratic principles in some cases when they could have been of benefit to Germany, for instance in 1919 when Austria was willing to be annexed to Germany and later on at the referendum in Upper Silesia. But Rosenberg did not turn towards tyranny for that reason. To paragraph 25 of the party program he said in his comments on page 46: "That central power—the Fuehrer's power is meant—should have as advisers representatives of the people as well as trade chambers grown out of organic life" (Doc. Book III, p. 6—Doc. Ro.34). And in his speech in Marienburg on 30 April 1934 "The Order of the German State" he said: The National-Socialist state must be a monarchy on a republican foundation. From that standpoint the state will not become a diefied purpose in itself, neither will its leader become a Caesar, a God or a substitute for God (Doc. Book I, p.131 Doc. Ro.7a).

In his speech "German Law" of 18-12-1934 Rosenberg stressed: "In our eyes the Fuehrer is never a tyrannical commander" (Doc. Book I, p.135, Doc. Ro. 7a).

Only in such expressions was a protest against the development of tyranny possible.

The development went beyond Rosenberg and degenerated. Rosenberg himself learned it while being Minister for the East. Rosenberg was an idealist, but he was not the unscrupulous man who inspired the state and the Fuehrer to commit crimes. I believe, therefore, that he should not be included in Mr. Jackson's accusation (page 8), that Rosenberg belongs to those who have been in Germany "the very symbols of race hatred, of the rule terror and violence, of arrogance and cruel power."

In looking over Rosenberg's writings, one more often finds statements and expressions which give a decided impression of tolerance.

He says, for example, in his "Myth", page 610, of the national church, which strove for: "A German church cannot pronounce compulsory dogmas which every one of its followers is compelled to believe, even at the risk of losing his everlasting salvation." In his speech "Ideology and Dogmatics" on November 5, 1938, in the University Halle-Witteberg, he demanded tolerance toward all denominations with the demand of "in respect for every real denomination" (Doc. Book I, p. 156, Doc. Ro. 7c) and in his speech "On German Intellectual Freedom" of July 6, 1935 he also spoke up for the freedom of conscience (Doc. Book I, p. 140 Doc. Ro.7a). There was no document presented which contained a proposal by Rosenberg for criminal persecution against one of his numerous ideological opponents, although he may have been prompted to do so by their sharp attacks on his opinions.

Further, the Prosecution accused him of militarism and an exaggerated respect for the soldier (Soldatismus.). Rosenberg was indeed an admirer of the soldier's life and his heroic attitude toward life but he also admired the peasant's standards as the basis of the national character (Volkstum). He promoted the creation of a people's army (Volksheer), first as the outward expression of Germany's unity, and at home for the purpose of strengthening and educating the people. However, he denies that in this connection he thought of world conquest. On this point I can refer to his speech "Germany's Position in the World" of October 30, 1933. There he offered peace to Russia on the occasion of the German withdrawal from the League of Nations. ("Blood and Honor", Doc. Book I, p. 147). I shall quote this part for it proves also that National-Socialism did not want to interfere in the affairs of other countries: "We are ready at any time, to maintain absolutely correct relations with Soviet Russia, because we, of course do not necessarily want to change the valves of an ideology in the field of foreign policy and foreign relations."

And in the same speech he emphasizes that the avowal of an ideology, which he calls ethnology is "not meant to be a lecture on racial hatred, but a lecture on racial respect" ("Blood and Honor" p. 377).

Mr. Jackson called Rosenberg's nationalism a "wild" one. He was passionate. But Rosenberg wanted thereby to overcome the class-conflict among the people which threatened their life, and for a clearer understanding of the facts it may also be said, that he is to be understood as a phenomena of psychic compensation, as often appears in a conquered people.

[The Tribunal requested a summary of the remainder of the speech if Dr. Thoma deemed it possible.—Ed.]

As to the accusation dealing with anti-Christianity, that is something which I have already mentioned, and I should just like to refer to it.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

I have already mentioned the words "Master Race", and in that connection I refer to the documents of Rosenberg. I wish to mention the fact that these words are not found in the documents at all.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

Concerning the Party program. I stated that Rosenberg did not draft this, but rather supplied only a commentary. Also, we are not concerned with the things contained in the Party program, but rather, how the Party program was realized.

I refer to the witness Funk, who stated that in his first action and his first program as Minister of Economy, he did not refer to the Party program, but rather, that his program was democratic and liberal.

[Dr. Thoma omitted the material from this point to paragraph 5, page 360, but the Tribunal agreed to take official notice of it when submitted in writing.—Ed.]

The entire ideology of the journalist and author Rosenberg becomes intensified and is rendered more menacing to peace according to the prosecution by the fact that Rosenberg was the deputy of the Fuehrer for the supervision of the entire intellectual and ideological education of the NSDAP. How did this assignment come about and what were the circumstances concerning it? On the basis of his previous experience in the educational work of the Party, its organizational leader asked Rosenberg whether he would not undertake a common intellectual project. Rosenberg answered in the affirmative, if the Fuehrer wished it so. Whereupon on the 24th of January 1934 the Fuehrer appointed him the leader of the designated office. It was a party office and had nothing to do with the schools (as is erroneously assumed). The office had no right to issue directives to national offices; even any possible correspondence with them had to be sent only via the party office. Neither did it have any right to suppress books, etc. Even a right to issue directives to the party was not granted the more so since the branch school directors were also subordinated to the Reichsleaders (SA, SS, HJ). Therefore, from the very beginning Rosenberg did not consider his work as that of an intellectual police, but as an executive, unifying work, as the central point of the expression and realization of the factual and personal power of convincing and of initiative.

He had no offices in the various Gaus, not even any separate representatives; he accepted the Gau Education Leader as his deputy at the same time in order to maintain a connection with practical education in the country.

The office had many things to review in the course of time, yet in the beginning it remained quite limited.

It became subdivided into various spheres of work, teaching and education proper, cultivation of literature, the arts, cultural and general problems. About twice a year, for the purpose of comparing teaching experiences, Rosenberg called together the so-called "Working Community for the Instruction of the Entire Movement". In it were represented the educational deputies of the political leadership and its various subdivisions. They reported on their work and expressed their suggestions. On the basis of these suggestions, Rosenberg lectured frequently in the Gaus on appropriate topics, and likewise induced his collaborators to handle such questions in all the subdivisions. These are the two educational meetings which the Prosecution (Prot. p.2265) mentioned in its brief by reason of their alleged "broad influence on the community schools" as an indication of criminal activity. This generally executive work found expression particularly in the periodicals of the offices of Rosenberg's department. At first in the "N.S.Monthly Booklets", which after 1933 acquired a gradually increasing polemical-political content in the interest of handling historical, cultural, scientific topics. "Art in the German Reich" achieved special significance, as it simply offered the most beautiful examples in the way of contemporary plastic art, excellently presented without discussion. The "Buecherkunde" offered a monthly cross section of writings and literary contributions. The monthly periodical "Music" devoted itself above all to serious art, the cultivation of the German classics, and without any pettiness toward new creations. The journal "Germanic Heritage" published contributions on research in early history. The "German Folklore" was devoted to games, folk songs, peasant customs. "German Dramaturgy" described the ambitions and problems of the contemporary theater.

Besides, there were special exhibitions of the lifework of great artists in Rosenberg's exhibition building in Berlin, book exhibits in various cities.

It is simply not true if the Prosecution declares that Rosenberg used his assignment to sow hatred. The essence of his entire work after 1933 was towards a deepening and large-scale promotion of new positive talents.

Political polemics in these seven years has almost entirely disappeared. But for the difficulties in the language, one would find in glancing over the journals and speeches, an honest great effort, whether Rosenberg spoke to the youth or to the technicians, teachers, lawyers, workers, professors, women at meetings of historians or the Northern Society. (Nordische Gesellschaft.)

Heads of his offices were instrumental in publishing and promoting valuable works of art: Classics of music, history of the German ancestry, world political libraries, development of the German peasantry, and others. In the present passionate days one is not interested to know of this side of a life work, and I only touch upon it but wish to emphasize that it was just that which seemed to Rosenberg, since 1933 potentially, as the most essential part of his work, as he likewise intended to devote himself in his old age entirely to the scientific-cultural research and teaching. But about this a few more words later.

Contrary to some, at first necessary, then in the evaluation of individual persons perhaps rather petty judgments, Rosenberg advocated at the universities of Munich and Halle the right of examining new problems of our times as well as the independence of scientific thinking. He declared, we would have to "feel as intellectual brothers of all those who once in medieval times raised the flag for this free research" (Doc. Book I, page 134). Against attempts to identify certain scientific physical theories with the Party, he protested in an official declaration rejecting this danger of hair-splitting. "It is not the task of the National-Socialist movement," said he, in a speech about Kopernikus and Kant on February 19, 1939, "to make any regulations for research other than necessarily connected with our philosophy of life". (Doc. Book I, p. 173).

When certain trends towards quantity, peak figures representing the number of visitors, etc., appeared within the otherwise desirable progress achieved by the DAF he unequivocally interceded in favor of an emphasis of the personal element. He rejected this idea of "mass production" in an address to youth, with the words, "One cannot receive art and culture delivered like mass-produced, ready-made clothes in a department store" (Doc. Book I, p. 155). If a poisoning of this youth is imputed to him here, he on the contrary asks (Doc. Book I, p. 161) for comprehension in teaching on the part of everybody under whose protection young people are placed and he unequivocally rejects here any orders in the intellectual field.

With regard to any (form of) collectivism, as has already been mentioned, he impresses on youth the importance of comradeship, but emphasizes the personal element and the right to solitude. When on the ground of certain occurrences many voices criticize the teaching body, Rosenberg apprehends the growth of a general discrimination against the profession. He takes stand against this danger in two speeches. At a great meeting in October 1934 at Leipzig, then at the session of the NS-Teacher's League at Bayreuth (Doc. Book I, p. 162), where he declared that the National-Socialist movement will step in and see that the teaching body be respected, just as it would have stepped in for all other professions.

By these brief allusions I mean to say that Rosenberg, as a regulating and leading intellectual force, advocated high cultural values and the rights of the personality, in a manner rendered convincing by his attitude and motives. Throughout the whole Party it was no secret that this activity involved deep opposition to the Propaganda Minister. Rosenberg considered it from the very beginning a calamity that culture and propaganda should be associated in one ministry. For him art was a faith, propaganda a form of the tactics of life.

At first things could not be changed, Rosenberg emphasized his attitude to the outside world by not attending a single annual meeting of the Reich Chamber of Culture, in the firm hope that at some later day another conception would win through.

Many things Rosenberg said did not fail to have their effect and certainly prevented some wrong actions, but more, and probably the most important, did not succeed because the legislative and executive powers in the State lay in quite different hands, and these finally due to the war, and in spite of the will to sacrifice, brought about not the development of the National-Socialistic idea but the growth of its degeneration. Moreover, this happened to an extent which Rosenberg could not foresee.

It was seen that the foundations for the spiritual instruction of the party were not sufficient, and round about 1935 there grew up a wish to have a serious place for research and study. This desire led to the idea which was known as "High School" later on and which was intended to take the form of an academy. Rosenberg considered the creation of this academy as a task for his old age. Since it would have taken years to provide teaching materials, and to choose personalities, the Fuehrer authorized Rosenberg, at the end of January 1940, to carry on the preparatory work he had started on official orders. Thus, contrary to what the prosecution asserts, the "High School" had nothing to do with Rosenberg's "Einsatzstab" which was not even planned at that time (Prot. p.2266).

The Moral Law as a Basis of the Indictment

Mr. Justice Jackson, in his fundamental speech of 21 November 1945, has expressed the desire that this trial should appear to posterity as the fulfillment of the human passion for justice. Mr. Jackson has furthermore declared that he has brought the indictment because of conduct which according to its plan and intention meant injustice from the moral and the legal standpoint. In his report of 7 June 1945, Mr. Justice Jackson has outlined further, that in this trial those actions are to be punished which since time immemorial have been considered as crimes and are designated as such in any civilized legislation. The most difficult problem, the greatest task, and the most tremendous responsibility for the Tribunal lies concentrated in this single point: What is justice in this trial?

We have no code of laws, we have, as astonishing as it may sound, even no fixed moral concepts for the relations of nations to each other in peace and war. Therefore, the prosecution had to be satisfied with the general words: "civilized conception of justice", "traditional conception of legality", "conception of legality built on sound common sense with regard to justice"; they have spoken of "human and divine laws" (Mounier on 7 February 1946, Transcr., p. 3981) ; the land warfare rules of the Hague refer in their preamble to the "laws of humanity" and to the "demands of the public conscience".

The basis of justice is without any doubt a morality, the moral law; thus if we wish to determine what injustice among nations is, what is contrary to the idea of justice among nations according to international law, then we must open the question of morality.

One will answer that is moral which the conscience designates to us as being moral.

But what is the original cause of moral discrimination, the desire and happiness of the individual, or the progress, the improvement, the preservation of the life of an individual, of a people, of humanity, or virtue, or duty?

How can I recognize what is good and what is bad? By intuition, or by experience, or by authoritarian and religious education? What is good and bad in the actions of a state, what is good and bad in the mutual relationship between states and nations? Does a difference exist between national morals and private morals? Can the state do any injustice at all? From Saint Augustine, through Macchiavelli and Nietzsche, to Hegel, Tolstoi and the pacifist thinkers, yearning humanity has received the most different answers to this question.

And furthermore, have fixed moral laws existed since time immemorial or have changes in the ideals of nations brought about changes in morals, too? What is the situation with regard to this today?

I have already said once, that according to my opinion, war itself is a brutality and a great crime of humanity against itself and the laws of life. An essentially different question is, whether this conviction has already entered the conscience of humanity. We consider ourselves way above the moral level of other nations and ages, and are, for example, astonished that the highest representatives of Greek morality, such as Plato, Aristotle, consider the exposure of children and slavery as absolutely right, or that in certain parts of East Africa today, only robbery and murder give a man the stamp of heroism; on the other hand it is absolutely compatible with our present day idea of morality that human beings are killed by hundreds of thousands in war and that the products of human welfare and culture are wantonly destroyed. Neither in a moral nor in a legal sense is this considered as unjust.

If the prosecution now charges the defendant with a wrong in the moral or legal sense, it is its duty to present the prerequisites for a punishment of the defendant for such a wrong, in such a way as to convince the court for, according to the hitherto existing moral concepts of nations, neither is killing in war a murder within the meaning of the penal codes of the individual countries nor have the measures of a sovereign country in war or in peace ever at all been interpreted as an offence within the meaning of these penal codes, or as punishable, immoral acts by the legal convictions of civilized humanity. Christianity teaches to return good for evil and to love one's enemy; this has been a world religion for 2,000 years, but many today still laugh if one demands the principles for the relations of nations between each other.

In the face of the yearning of humanity the prosecution at last wants to help progress, even if only step by step, in this direction, it seeks to achieve that "unmistakable rules" emerge from this trial; its mistake, however, is that it wants to explain the "traditional opinions of justice" and the civil criminal laws as the contents of a public conscience which hardly exists any longer, and compliance with which cannot be demanded retroactively of the defendants.

It is certainly very true that a deep change is commencing today in the moral thinking of humanity, a new genesis of the moral law of nations, and that this trial before the High Tribunal constitutes a leap into this new era. However, it appears to me very doubtful whether it is just to hammer a new kind of justice into the conscience of mankind by making an example of the defendants.

It is easy to speak of human and divine laws, or of the demands of public conscience, but we become greatly embarrassed if we are to answer the question: What is the substance and content of private morality, when is an act immoral according to private morality? In their anguish over what is good or evil, some rely on religion, others have been taught wisdom by experience and education, others still find an explanation in the philosophers.

The state has in recent times taken on the moral education of its citizens in increasing measure, not only through criminal laws but also through "political education" or whatever other name is used for it. Not only does the National-Socialist state have a great advantage here over the liberal states, but so do all the totalitarian states of the world; they have hammered moral principles into the minds of their citizens which are of a private and public nature. They have proclaimed moral ultimate values, such as fidelity, honor, and obedience. By this means reflection concerning private and public morals is made easier for the individual citizens and they are obliged by force to uphold these ultimate values in the prescribed form. The German people, which has become tired and resigned as a result of continual warlike disputes and religious upheavals, willingly followed National Socialism, even when the latter's ethics were exalted to a faith; it made this leap into the unknown, not with the idea of being taught by this means to deceive people, to enslave them, to rob them, to kill them to torture them (see Mounnier on 7 February 1946, transcript, p. 3983), but because it asked for a moral elevation, an authoritative moral leadership in its material and spiritual distress, and because nothing else was offered to it, above all, not by a liberal world conscience which did not know how to make the fundamental principle of humanity a reality.

The National Socialist ethical conceptions were taught to Germans as "summum bonum", as the highest idea, and they believed the idea to be moral and good. Then National Socialism got into conflict not only with ideologies, but also with the means of power of other states, because it could not find the formula which would include not only the perfection and the life for Germany, but also the interests and justice for all nations of the world. Trying to construe out of such inadequacy of a national ethical idea, however inefficient, a punishable action, a conspiracy is not acceptable in my opinion if only because uniformly acknowledged national morality has not yet developed, but the unlimited national egotism has not been dethroned so far and even today is still considered as the highest moral instance of the state.

One could object, You Germans should only have followed the teachings of your great philosopher Kant in thought and action, according to his "categorical imperative". Act in such way that the maxim of your will could always serve as a principle for general legislation! Then you would and should have recognized the moral instability of National Socialist teachings. To that I can answer with the words of the great English philosopher John Locke, who says the following as to what is good or evil: ("Essay concerning human understanding" Book II, ch. XXVIII, par. 6 f.) "God has ordained it in such a manner, that certain activities produce general happiness, preserve society, and even reward the doer. Man discovers that and establishes it as a practical rule. With that rule are connected certain rewards and punishments either by God Himself (Reward and punishment of infinite size and duration in the Beyond) or by mortals (legal penalties, social approval or condemnation, loss of honor), good and evil which are not the natural effects and results of the actions themselves. Then men point to those rules or laws, i.e., divine and made by the state, and the laws of custom or of private opinion, and measure their actions by them. They judge the moral value of their actions according to whether they conform with the rules or not. The moral good or evil is therefore only conforming or not conforming our action with a law, which by the will and power of the legislator determines for us what is good and evil.

Therefore good and evil has been and still is today what the authorities want or do not want. Christianity for centuries has been preaching not only to Germans but to all nations of the world, "Everybody is a subject to the authority over him." And the authorities do not move beyond conscience and morality so long as the expansion of national egotism is not opposed by clear laws and commandments and irrefutable legal convictions.

The highest good (summum bonum) in international morals of nations has not yet been mandatorily codified. There does not exist any authoritative idea for the community of nations. Instead of discussions on individual ethics and individual criminality, the prosecution should have submitted its accepted principles and criteria as international common law, which was not done.

Therefore, with regard to the standpoint of the prosecuting authorities as to the personal responsibility of the acting statesmen, I must put it down as a totally new philosophy and one which is very dangerous in its consequences.

Apart from the misdeeds of the individual, which do not satisfy even the minimum of moral conceptions, the ethical conceptions of National Socialism and the actions resulting from them, insofar as they are an expression of the National Socialist ethos, cannot be subjected to the judgment of a human forum, since they are an event of world history. And the "Fate and Guilt" of the defendant Rosenberg likewise cannot be judged conclusively within the framework of this trial. As to the question of deciding the criminal guilt of the defendant, that is the heavy task of the High Tribunal but his potential historical guilt cannot and will not be judged by the Tribunal. Rosenberg like all persons of historical importance has acted according to his character and his pathos, thereby perhaps becoming guilty in the eyes of history. The more freedom of action a given personality has in his will, the clearer becomes the importance of conditions and the onesidedness of all human activities, and out of an insignificant guilt there grows, particularly in historical personalities, an enormous power, which decides the fate of many and which remains a gloomy foreboding him who lets it loose.

Goethe says once, "The doer never has a conscience, no one feels his conscience but the observer". But this maxim can never mean that a person is not to move and act to the best of his knowledge and conscience, and particularly for his country's sake. And we all know that in reality nobody is capable of attaining the good he is striving for. Just as his knowledge, so will his actions, always be incomplete. Any action we accomplish as free beings is an infringement on the operating forces of the universe, which we are never able to overlook.

I will now sum up in conclusion and I would like to point out the following:

Rosenberg was caught up in the destiny of his nation in a period of heavy foreign political oppression and internal dissension. He struggled for cultural purity, social justice, and national dignity and rejected all the movements prompted by passion which did not admit these high values or which consciously attacked them in an irreverent manner. With respect to foreign policy he stood for an agreement, especially between the four central powers of the European continent, under recognition of the heavy consequences of a lost war.

He acted in all loyalty and respect towards a personality who gave a political shape and increasing power to his ideas.

After the political victory at home, Rosenberg advocated the overcoming of the polemics and other aspects of the period of struggle. He stood for a chivalrous solution of the existing Jewish problem, for a large scale spiritual-cultural instruction of the party, and, contrary to the statements of the prosecution, he refused any religious persecution. He cannot be blamed for emphasizing a definite religious-philosophical conviction of his own. The practical utilization of many of his views was accepted by authoritative agencies of the party but they were disregarded in a steadily increasing proportion, especially after the beginning of the war. Finally as has been discovered now, they were often turned into the opposite of what Rosenberg fought for.

Until 17 July 1941 Rosenberg was excluded from participation in any state legislation. Considered from the point of view of personal responsibility, all his speeches and writings come within the scope of unofficial journalistic activity which every politician and writer must admittedly be at freedom to engage in, a freedom which the Tribunal has fundamentally acknowledged with regard to all utterances by the statesmen of all other countries during the unofficial period of their career. It seems to have all the more importance that Rosenberg as a private man did not make any appeals in favor of a war or any inhumane or violent acts.

As Minister for the East he advocated a generous solution taking into consideration the comprehensible national and cultural aspiration of the Eastern European peoples. He fought for this conception as long as it had some prospects. Ultimately realizing that Hitler refused to be persuaded, he requested his dismissal. The fact that he could not prevent many outrages from happening in the East cannot be brought a penal charge against him. Neither the Wehrmacht nor the Police nor the Labor conscription were subject to his authority. Whenever injustices or excesses came to his knowledge, he did everything he could to counteract them.

For almost a whole year, Rosenberg endeavored to keep the labor recruiting on a voluntary basis. When several age classes were later called, he protested against every abuse by the executives and always demanded redressing measures. Quite apart from the legitimate requirements of the occupation power, his labor legislation for the Eastern territories was necessary for the establishment of order and the repression of despotism as well as of dangerous idleness, growing sabotage, and increasing murderous actions. It was war time and it was a war area, not a post-armistice period or by any means a period subsequent to a definite capitulation.

So far as he was informed of things and commanded any influence Rosenberg fought for his good conviction. The fact that adverse powers were stronger cannot be brought as a charge against him. One cannot punish offenses and at the same time punish those who revolted against them. With regard to the terrible extermination orders which have now been disclosed, it is certainly possible to raise the point whether Rosenberg could not have exerted a much stronger opposition. Such a demand would, however, suppose an earlier knowledge of things which he only learned after the collapse. Should he be incriminated with any carelessness it must not be forgotten that he felt the duty of serving the German Reich and engaged in the struggle for its existence and that terrible injuries were also inflicted upon the German nation, injuries which Rosenberg was unable to accept as war necessities.

The official orders, as for example the duties of the Operational staff West and East, were carried out by Rosenberg in preserving his personal integrity. The seizure of artistic and cultural goods he always carried out provisionally, subject to final decision of supreme headquarters and, as far as was possible in any way, subject to agreement with the proprietor. Moreover, for the use of stray furniture for the benefit of air raid victims in Germany, provisions were made for the subsequent indemnification of the proprietors based upon a precise inventory.

Considered in his entire personality, Rosenberg has followed his belief and love for an ideal of social justice allied to national dignity. He has fought for it openly and honorably, he has gone to prison and risked his life for it. He did not only step in when National Socialism afforded the opportunity to begin a career but at a time when it was dangerous and only cost the life of victims. In his speeches after 1933, he took his stand in favor of a deeper spiritual formation, a new cultural education, personality values and respect for every form of honest work. He accepted the sombre days of that time as unfortunate but inevitable accompanying phenomena of a revolution without bloodshed without having in fact been aware of the secret details. He fully believed that the better forces and ideas would prevail over these as well as other human imperfections. In the war, he was conscientiously at the service of the Reich.

For 25 years he kept his personal integrity and untainted character through the revolution and the events of the war. He had to experience with deep sorrow how a great idea in the hands of those possessed with the lust for power was gradually abused, and in 1944, at party reunions, he protested against this abuse of the power entrusted to its holders. He had to see at the court proceeding, to his disgust and horror, the evidence of the degeneration of his life ideal, but he knows that his aspirations and the aspirations of many millions of other Germans have been honorable and decent. Today indeed, he stands up for his honorable, honest, and humanly irreproachable conduct and, full of sorrow for the wounds inflicted upon all nations and for the downfall of the Reich, he awaits the sentence of a just Tribunal.

2. FINAL PLEA by Alfred Rosenberg

The Prosecutors, going beyond a repetition of the old accusations, have raised new ones in the strongest manner. They now claim that we all attended secret conferences in order to plan for an aggressive war. Further, we are supposed to have ordered the alleged murder of 12,000,000 people. All these accusations have been collectively described as Genocide—the Murder of peoples. I want to declare the following in that connection.

My conscience is completely free from such guilt, beginning from an assistance in the murder of people. Instead of working for the destruction of the culture and national sentiments of the people of Europe, I represented the furthering of their physical and moral living conditions; and instead of destroying their personal safety and human dignity, I have proved that with all my might I stood up against every policy of forcible measures and that I demanded with severity a just behavior on the part of the German officials and a humane treatment of Eastern workers. Instead of carrying on a policy of "child slavery", I saw to it that juveniles coming from territories endangered by combat were protected and took special care of them. Instead of exterminating religion, I reinstated the liberty of the churches in the Eastern territories by a decree of tolerance.

In Germany, representing my ideological convictions, I demanded freedom of conscience, granted it to every enemy, and never ordered a persecution of religion.

The thought of a physical extermination of Slavs and Jews, that is to say, the actual murder of peoples, has never entered my mind and I must certainly not advocate it in any way. It was my opinion that the existing Jewish question had to be solved by the creation of a minority right, emigration, or by settling the Jews in a national territory by a process lasting a decade. The white paper of the British Government of 24 July 1946 shows how a historical development can cause measures which were never previously planned.

The practice of the German State Leadership in the war as proved here during the trial, completely differed with my conviction. Adolf Hitler, in an increasing measure, drew persons to himself who were not my comrades, but my opponents. I must say, with reference to their harmful activities, this is not the execution of National Socialism for which millions of believing men and women have fought. It was its shameful misuse; it was the degeneration which I also deeply condemned.

The thought that a crime of Genocide has to be outlawed by International agreement and will be the subject of severe penalties is something which I sincerely welcome, though under the natural prerequisites, Genocide neither at present nor in the future may be permitted against the German people in any way.

Among other matters, the Soviet Prosecutor stated that the entire "so-called ideological activity" had been a "preparation for crime". In that conection I wish to say that National Socialism represented the thought of an overcoming of the class struggle which was disintegrating the people, and the unity of all classes in a large community of peoples. Through the Labor Service, for instance, it reinstates the honor of manual labor on the mother earth, and directs the eyes of all Germans to the necessity of a strong peasantry. By the Winter Aid Work it created a comradeship of the entire nation working for all the comrades in need, irrespective of their former Party membership. It built homes for mothers, youth hostels, and community clubs in the factories; and it acquainted millions with the yet unknown treasures of art.

And all that, I too served.

Never in my love of a free and strong Reich did I forget the duty towards honorable Europe. As early as 1932 I applied to Rome for its maintenance and peaceful development, and I fought as long as I could for the ideas of the inner winnings of the peoples of Eastern Europe when becoming Eastern Minister in 1941. Therefore, in this hour of need, I cannot deviate from the idea of my life, from the ideal of a socially peaceful Germany and a Europe conscious of its value, and I will remain faithful to them.

The honest service for this ideology considering all human shortcomings was not a conspiracy; my actions were never a crime. I understood my struggle to be, as it was understood by many thousands of comrades, the struggle for the most noble idea for which it was fought for every 100 years and for which the flag was raised.

I ask you to recognize this as the truth.

In that case no persecution of a conviction would arise from this trial; then, in my conviction, a first step would be taken for a new mutual understanding of the peoples, without prejudice, without hostile sentiments, and without hatred.

IX. HANS FRANK

1. FINAL ARGUMENT by Dr. Alfred Seidl, Defense Counsel

Mr. President, my Lords,

The defendant Dr. Hans Frank is accused in the Indictment of having utilized his posts in Party and State, his personal influence and his relations with the Fuehrer for the purpose of supporting the seizure of power by the National Socialists and the consolidation of their control over Germany. He is also accused of having approved, led and taken part in the war crimes mentioned in Count 3 of the Indictment, as well as in the crimes against humanity mentioned in Count 4, particularly in the war crimes and crimes against humanity committed in the course of the administration of occupied territories.

As I have already explained in the case of the defendant Hess, the Indictment fails to adduce any facts in substantiation of these accusations. It is similar in the case of the defendant Frank; here again the Indictment contains no statement of factual details to substantiate the accusations.

Like all the other defendants, the defendant Frank is accused of having taken part in a common plan which is alleged to have had as its object the planning and waging of wars of aggression and the commission in the course of these wars of crimes which infringe the laws and customs of war.

The evidence has shown that the defendant Frank joined the National Socialist Party in the year 1928. Both before and after the assumption of power by the National Socialists, he was concerned almost exclusively with legal questions till the year 1942. The Reich Law Department was under his control as Reichsleiter of the Party. After Adolf Hitler's appointment as Chancellor, Frank became the Bavarian Minister of Justice. In the same year he was appointed Reich Commissioner for the political coordination of legal institutions. This task consisted in the main of transferring to the Reich Ministry of Justice the functions of the administrative legal departments of the component States (Laender). That was completed in the year 1934. When the affairs of the Bavarian Ministry of Justice had been transferred to the Reich, the office of the defendant Frank as Bavarian Minister of Justice came to an end. In December 1934 he was appointed Reich Minister without Portfolio. In addition he became, from 1934, President of the Academy for Germany Law which he himself had founded, and President of the International Chamber of Law. Finally, he was the Leader of the National Socialist Lawyers' Association.

This list of the various posts held by the defendant Frank in Party and State would alone be sufficient to show that his work was almost exclusively concerned with legal matters. His tasks were in the main confined to the execution of Point 19 of the Party Program, which demanded a German Common Law. And in actual fact almost all speeches and publications by the defendant Frank, both before and after the assumption of power by the National Socialists, dealt with legal questions in the widest sense of the term.

In the course of his examination in the witness box, the defendant Frank testified that he had done everything he could to bring Adolf Hitler to power and to carry out the ideas and the program of the National Socialist Party. But whatever the defendant undertook in this respect was done openly. Here I can for the most part refer to the statements I made in the case of the defendant Hess. The aim of the National Socialists before they assumed power can be expressed in a few words: Liberation of the German people from the shackles of the Versailles Treaty; elimination of the huge mass of unemployment which had arisen in consequence of that Treaty and of the unreasonable reparations policy of Germany's former enemies; elimination of the signs of degeneracy—political, economic, social and moral—connected with that unemployment, and finally the restoration of the sovereignty of the German Reich in all spheres.

The Prosecution was unable to produce any evidence to show that the revision of the Versailles Treaty was, if necessary, to be carried out by violent means and by war. The political, military and economic situation in which Germany found herself before the assumption of power, a situation in which it could only be a question of eliminating the terrible consequences of the economic collapse and of enabling seven million unemployed again to play their part in the economic process, necessarily made any serious thought of a war of aggression appear futile.

Moreover, the evidence brought forth nothing to show the existence of the common plan alleged by the Prosecution in Count One of the Indictment, if by this we are to understand a particular, clearly defined plan evolved by a closely circumscribed, unchanging set of people.

As regards the participation of the defendant Frank in this common plan, the evidence and in particular the testimony given by the witness Dr. Lammers and the defendant himself in the witness box, has shown on the contrary that Frank did not belong to the circle of Hitler's closer collaborators. The Prosecution was unable to present to the Tribunal a single document dealing with important political or military decisions with which the defendant Frank was connected. In particular, the defendant Frank was not present at any conference with Hitler which the Prosecution considered especially important for proving the alleged common plan, the minutes of which conferences the Prosecution has submitted as Exhibits USA 25 to 34.

The only statute which is important in this connection is the Law concerning the Reintroduction of General Conscription of March 16, 1935. In the case of the defendant Hess I have already explained in detail what led to the promulgation of that law and why it cannot be looked upon as an infringement of the Versailles Treaty.

The defendant Frank signed that law in his capacity as Reich Minister, as did all the other members of the Reich Government. That law, which had as its object the restoration, at least in the military sphere, of the sovereignty of the German Reich, did no harm to any other nation. Nor did the content of that law or the circumstances which led to its enactment allow of the conclusion that it was part of a common plan whose object was the launching of a war of aggression. The German people had been obliged to realize during the preceding 17 years that the voice of a nation without military power, and in particular a nation in Germany's geographical and military situation, cannot make itself heard in the concert of nations if it has not at its disposal adequate instruments of power. The Government of the German Reich faced the consequences of this realization, after equality of rights had been promised the German people over and over again for fourteen years and that promise had not been kept, and in particular after it had become clear in the years 1933 and 1934 that the Disarmament Conference would not be capable of fulfilling its appointed functions. For the rest, I refer to the Proclamation of the Reich Government to the German people, which was issued in connection with the publication of that law.

Further: the work of the defendant Frank, even after the assumption of power, up to the beginning of the war, was confined almost exclusively to the execution of tasks connected with the leadership of the Academy for German Law and the National Socialist Lawyers' Association.

The objects of the Academy for German Law are apparent from the Law concerning its establishment of July 11, 1943. It was intended to encourage the reform of German legal processes and, in close and constant cooperation with the appropriate legislative authorities, to put the National Socialist program into practice in the whole sphere of law. The Academy was under the supervision of the Reich Minister of Justice and the Reich Minister of the Interior. The function of the Academy was to prepare drafts of statutes. Legislation itself was exclusively a matter for the appropriate Reich Ministries for the various departments. One of the tasks of the Academy was to exercise the functions of the legal committees of the former Reichstag. In actual fact the work of the Academy was done almost exclusively in its numerous committees which had been established by the defendant. Entry into the Academy was not dependent on membership of the Party. Most of the members of the Academy were legal scholars and eminent practitioners of law, who were not Party members. Moreover, it is well known that the Academy for German Law kept up close relations with similar establishments abroad, and that numerous foreign scholars gave lectures in the Academy. These facts entirely exclude the assumption that the Academy could have played any important part in the common plan alleged by the Prosecution. The same is true of the position of the defendant Frank as Leader of the National Socialist Lawyers' Association.

Adolf Hitler's attitude to the conception of a State resting on law (Rechtsstaat), in so far as any doubt could still have been entertained about it, has become perfectly clear through the evidence presented at this trial. Hitler was a revolutionary and a man of violence. He looked on law as a hindrance and as a disturbing factor in the realization of his plans in the realm of power politics. Moreover, he left no doubt about this attitude of his and spoke about states under rule of law in a number of speeches. He was always very reserved in his dealings with lawyers, and for this reason alone it was impossible from the outset that any close association could have developed between him and the defendant Frank. The defendant Frank considered it his life's work to see the conception of a State resting on law realized in the National Socialist Reich, and above all to safeguard the independence of the judiciary.

The defendant Frank proclaimed these principles as late as in the year 1939, before the outbreak of war, in a great speech he made before 25,000 lawyers at the final meeting of the Congress of German Law in Leipzig. Among other things he declared on that occasion:

"1. No one shall be sentenced who has not had an opportunity of defending himself.

2. No one shall be deprived of his property, provided that he uses it unobjectionably from the point of view of his fellow-men, except by judicial sentence. Legal property in this sense are: Honor, freedom, life, earnings from work.

3. An accused person, no matter under what procedure, must be enabled to procure someone to defend him who is capable of making legal statements on his behalf; he must have an impartial hearing according to law. If these principles are applied to their full extent, then is the germanic ideal of law fulfilled."

These principles constitute an unmistakable repudiation of all methods employed in a police-ruled State and imply moreover the unmistakable rejection of the system of concentration camps. The defendant Frank had actually spoken against the establishment of concentration camps before the date indicated. The evidence has shown that in the year 1933 he, in his capacity as Bavarian Minister of Justice, was opposed to the concentration camp of Dachau, that he urged the application of the so-called legality principle (i.e. the prosecution of all offenses by the State) even in these camps, and that, over and above this, he demanded the dissolution of the concentration camp of Dachau. That this last is a fact is shown by the evidence, taken on commission, of the witness, Dr. Stepp.

The Prosecution also appears to see in the sentence "Law is what is useful to the people" and indication of the participation of the defendant Frank in the alleged common plan. Such a conclusion could only be drawn from a complete misapprehension of the idea which the defendant Frank wished to express by means of this sentence. It is merely the issue of a challenge to the individualistically over-sensitized legal mind. In the same sense as is implied in the phrase "The common good before one's own", the sentence quoted is intended to express the demand for a legal system which, to a greater extent than in previous years, takes account of common law and socialist tendencies. It is in reality nothing more than a different way of saying: Salus publica suprema lex.

These material differences alone would have been sufficient to make it unthinkable that the defendant Frank could have belonged to the inner circle of Hitler's collaborators. The difference of outlook in regard to the functions of law were bound to become more apparent in the course of the war. It could therefore cause no surprise that after the death of the former Reich Minister of Justice Dr. Guertner, it was not the defendant Frank who was appointed as his successor, but the President of the People's Court Dr. Thierack.

To sum up: It may be said that there is no factual foundation for the assumption that the defendant Frank participated in a common plan which had as its object the waging of an aggressive war and in connection therewith the commission of crimes against the rules of war. Before I turn to the points of accusation brought against the defendant Frank within the framework of his career as Governor-General, I will refer shortly to his responsibility under penal law as a member of the organizations accused of criminality.

In so far as Frank's responsibility as member of the Reich Government is under investigation, I can here refer in the main to my statements regarding the defendant Hess. The only difference lies in the fact that whereas Hess, too, was only Reich Minister without Portfolio, he had, as the Fuehrer's Deputy under the Fuehrer's Decree of July 27, 1934, a considerable part to play in the preparation of laws. That was not the case with the defendant Frank. He had hardly any influence at all on the legislation of the Reich. That is why he was co-signatory of so extraordinarily few Reich laws. With the exception of the law by which general conscription was reintroduced, his name is to be found under none of the laws which the Prosecution has presented to the Tribunal as relevant to the proof of the criminal nature of the Reich Government as an organization.

The defendant Frank, in his capacity as Reichsleiter and Leader of the Reich Law Department was also a member of the Leadership Corps of the National Socialist Party. An investigation of this point of accusation seems all the less called for, as no acts can be attributed to the defendant Frank which fulfill the requirements of any penal law. For the rest, I can here too refer to my statements in the case of the defendant Hess.

In the Annex to the Indictment it is alleged that the defendant Frank was a General of the SS. The evidence has shown that Frank at no time belonged to the SS and that he did not even have the honorary rank of a general of the SS. On the other hand, he was an Obergruppenfuehrer of the SA. With respect to the application made by the Prosecution to declare that organization criminal too, the same may be said as in the case of the appli-

cation to declare the Leadership Corps criminal. The Charter and the Prosecution here again depart from a principle which has hitherto been considered an indispensable component of any modern criminal law practice, namely that no punishment is admissible unless guilt has been established in every individual case.
My Lords!

I now pass to the points of accusation in connection with the career of the defendant Frank as Governor-General. When the Polish Government had left the country after Poland's military collapse, the German occupying forces were faced with the task of building up an administration without the help of any parliamentary representation or any representatives of the former Polish State. The difficulties arising out of this situation were bound to be all the greater because, in spite of the comparatively short time that the war had lasted, the war damage, especially to the communications system, was not inconsiderable. Above all, however, the establishment of an orderly administration was rendered more difficult by the fact that the unitary economic territory of the former Polish State was divided into three parts. Of the 388,000 sq.km. which made up the territory of the former Polish State, about 200,000 sq.km. were taken over by the Soviet Union; 97,000 sq.km. formed the Government-General, while the rest was incorporated in the German Reich. A change came on August 1, 1941. On that date Galicia was annexed to the Government-General as a new district, whereby the territory of the Government-General was increased to an area of approximately 150,000 sq.km. with 18 million inhabitants. This frontier-delimitation made all the more difficulties for the administration, as the agricultural excess products all went to the Soviet Union, while on the other hand, important industrial cities such as Lodz, and above all the coal fields of Dombrowa, fell to the Reich.

Directly after the military collapse of Poland, a military government was sent up to cover the four military districts of East Prussia, Posen, Lodz and Cracow, Commander-in-Chief General von Rundstedt being placed at the head of that Government. The defendant Frank became Supreme Chief of Administration (Oberverwaltungschef).

The military Government ended on October 26, 1939, with the coming into force of the Decree of the Fuehrer and Reich Chancellor (October 12, 1939) concerning the administration of the occupied Polish territories. By this decree the defendant Frank was appointed Governor-General for the occupied Polish territories which were not incorporated in the Reich and which shortly afterwards became known as the "Government-General".

As the time at my disposal is short, I will not go into detail on the question as to whether the administration of the territories of the former Polish State jointly designated as the Government-General should have conformed to the principle of occupatis bellica (occupation of enemy territory), or whether it should not rather be assumed that the principles of debellatio (complete subjugation and incorporation in a foreign State) were applicable in that case.

I come now to the question of the powers vested in the defendant Frank by virtue of his office of Governor-General. According to Article 3 of the Fuehrer's Decree of October 12, 1939 the Governor-General was directly subordinate to the Fuehrer. The same provision placed all branches of the administration in the hands of the Governor-General.

In actual fact, however, the Governor-General had by no means such wide powers as it would seem at first sight. The Fuehrer's Decree itself provided in Article 5 that the Ministerial Council for the Defence of the Reich could also make laws for the territory of the Government-General.

The Plenipotentiary for the Four-Year-Plan had the same power. Article 6 provided that over and above this all the highest Reich authorities could issue decrees necessary for planning within the German living space and economic area, and that these would be effective also for the Government-General.

Apart from this limitation of the authority of the Governor-General, as provided in the Fuehrer's Decree of October 12, 1939, other powers were conferred at a later date, which impaired to an equal degree the principle of a military administration. That is particularly true of the position of the Plenipotentiary for Labor. I refer at this point to the appropriate documents presented by the Prosecution and the Defense, in particular to the Fuehrer's Decree of March 21, 1942, in which it is expressly provided that the powers of the Plenipotentiary for Labor extended to the territory of the Government-General. The whole armament industry in the Government-General was at first in the hands of the OKW; after the establishment of the Reich Ministry of Armaments, it came under the jurisdiction of the latter.

The evidence has also shown that in other directions too the principle of military administration was extensively infringed. For this I refer to the Statements of the witnesses Dr. Lammers and Dr. Buehler and to the content of the documents submitted by me, especially the document USA 135. This deals with the directives in "special matters concerning instruction No. 21 (case Barbarossa)," in which it is expressly provided that the Commander-in-Chief of the Army shall be entitled "to order such measures in the Government-General as are necessary for the execution of his military duties and for safeguarding the troops," and in which the Commander-in-Chief is empowered to delegate his authority to the Army groups and armies.

All these infringements of the principle of a unitary administration of all special powers, however, pale beside the special position allotted to Reichsfuehrer SS Himmler even in respect of the territory of the Government-General. The evidence, and particularly the testimony of Dr. Bilfinger, councillor (Oberregierungsrat) in the RSHA, shows that as early as in 1939 when the defendant was appointed Governor-General, a secret decree was issued in which it was provided that the Higher SS and Policeleader East was to receive his instructions direct from the Reichsfuehrer SS and Chief of the German Police Himmler. Similarly, it is provided in the Decree of the Fuehrer and Reich Chancellor for the Consolidation of the German Nation that the Reichsfuehrer SS should be directly empowered to effect the formation of new German Settlement areas by means of resettlements. These two decrees conferred on the Reichsfuehrer SS powers which from the very first day of the existence of the Government-General were to confront its administration with almost insurmountable difficulties. It was very soon evident that the general Administration under the Governor-General had at its disposal no executive organs in the true meaning of the term. Since the Higher SS and Policeleader East received his instructions and orders direct from Reichsfuehrer Himmler and refused to carry out instructions emanating from the Governor-General, it was very soon seen that in reality there were two separate authorities ruling over the Government-General. The difficulties which thus arose were bound to become all the greater as Higher SS and Policeleader Krueger, who for not less than four years was Himmler's direct representative in the Government-General, did not even inform the administration of the Government-General before carrying out police measures.

It is a well-known experience in constitutional life that any administration lacking executive police organs is in the long run not capable of carrying out its appointed functions. This is even true under normal conditions, but must be more especially the case in the administration of occupied territory. If we remember moreover not only that Reichsfuehrer SS Himmler issued his instructions direct to the Higher SS and Policeleader, ignoring the Governor-General, but that over and above this the offices III, IV, V and VI of the RSHA also gave direct orders, namely to the Commander of the Security Police and the SD in Cracow, then we can assess the difficulties with which the civil administration of the Government-General had to wrestle day by day.

Under these circumstances the Governor-General had no choice but to make every attempt to reach some form of cooperation with the Security Police, unless he was prepared to relinquish entirely any hope of building up a civil administration in the Government-General. And in fact the history of the Administration of the Government-General, which lasted more than five years, is for the greater part nothing but a chronicle of uninterrupted struggles between the Governor-General and the administration on the one hand and, on the other, the Security Police (including the SD) represented by Reichsfuehrer SS Himmler and the Higher SS Policeleader East.

The same applies to the work of Himmler and his organs in the field of resettlements. As Reichs Commissioner for the Consolidation of the German Nation Himmler and his organs carried out resettlement measures without even getting into previous contact with the administration of the Government-General or informing the Governor-General.

The numerous protests of the Governor-General, addressed to Dr. Lammers, Reichsminister and Chief of the Reich Chancellery, with regard to the measures taken by the Reichsfuehrer and the Higher SS and Policeleader East and the difficulties they put in the way of the administration of that territory, have been established by the evidence. These protests led in the year 1942 to an attempted new regulation of the relationship between the administration and the police. In retrospect it can be said today as a result of the evidence that even this attempt was only utilized by Himmler and the Security Police to undermine internally and externally the position of the Governor-General and his civil administration.

By Decree of the Fuehrer, dated May 7, 1942, a State Secretariat for Security was established in the Goverment-General, and the Higher SS and Policeleader was appointed State Secretary. According to Article II of this Decree the State Secretary for Security also became the representative of the Reichsfuehrer SS in his capacity as Reichs Commissioner for the consolidation of the German nation. The decisive provision of this decree is contained in Article IV in which it is stated verbatim:

> "The Reichsfuehrer SS and Chief of German Police can issue direct instructions to the State Secretary for Security in matters pertaining to Security and the Consolidation of the German nation."

Herewith the content of the secret decree issued in the year

1939 on the establishment of the Government-General, which also provided that the Higher SS and Policeleader East was to receive his instructions direct from the Berlin central offices and above all from the Reichsfuehrer SS in person, was expressly and now publicly confirmed. It is true that Article V of the Fuehrer's Decree of May 7, 1942, provided that in case of differences of opinion between the Governor-General and the Reichsfuehrer SS and Chief of German Police the Fuehrer's decision was to be obtained through the Reichs Minister and Chief of Chancellery.

Chief of the Reich Chancellery Lammers was interrogated on this subject when he appeared as witness before this Tribunal. He testified that in so far as he found it possible at all to gain the Fuehrer's ear in these matters, the latter on principle invariably approved Himmler's view. This is not surprising if we remember Himmler's position in the German Governmental system, particularly during the later war years. This deprived the defendant Frank of the last possibility of influencing in any way the measures taken by Himmler and the Higher SS and Policeleader East.

In consequence of Article I, paragraph 3 of the Fuehrer's decree of May 7, 1942, the scope of duties of the State Secretary for Security had to be newly defined. Both the Higher SS and Policeleader, and backing him, the Reichsfuehrer SS, attempted to bring as much as possible under their jurisdiction in connection with the new regulation of the competence of the State Secretariat; on the other hand, the Governor-General, in the interest of the maintenance of some sort of order in the administration, naturally tried to obtain control of at least certain departments of the order Police and the administration Police. There is no doubt at all that it was the Police that emerged the victor in these struggles.

On June 3, 1942, the Governor-General was obliged, in a decree concerning the transfer of offices to the State Secretary for Security, to declare himself willing to transfer to the State Secretary all the departments of the Security Police and the order Police. I have submitted this decree to the Tribunal (together with its two appendixes A and B) in the course of the evidence as Exhibit Frank 4. The two appendixes list all the departments of the order and security police that have ever existed in the German Police system. In Appendix A, which covers the departments of the order police, there are 26 numbers in which not only all the departments of the order police are transferred to the State Secretary for Security, but over and above that, almost all the departmental functions of the so-called administration police. I will only mention No. 18 as one example among many. This transfers to the order Police, and therewith to the Higher SS and Policeleader, all matters connected with price control. What is true of the order Police is true in still greater measure of the departments of the Security Police. No change as compared with the earlier situation was brought about by placing under the jurisdiction of the Higher SS and Policeleader the whole of the political and criminal police, political intelligence, Jewish affairs and similar departments; these competencies were already his as leader of the Security Police and the SD, and were made entirely independent of the administration of the Government-General under the secret decree of the year 1939. Departments were also transferred to the State Secretary for Security which had only the remotest connection with the tasks of the Security Police, i.e., matters such as the regulation of holidays and so on. Of no inconsiderable importance are the two last numbers in the appendix A and B, in which it is expressly provided that at conferences and meetings, particularly with the central Reich authorities, on all matters pertaining to the Order-and security police, the Government-General—not the Governor—should be represented by the Higher SS and Policeleader. Therewith any competency possessed by the Governor-General, even in regard to comparatively unimportant branches of the Administrative police, was transferred to the organs of Reichsfuehrer SS Himmler, and the Government-General was thus deprived of even the last remnants of an executive of its own.

Only by considering these facts and the development of the conditions obtaining between administration and police in the Government-General is it possible to form an even approximately correct appreciation of the events in the Government-General which form part of the subject of the indictment in this trial. Your Lordships!

The Prosecution seeks to prove its accusations against the defendant Dr. Frank in the main by quotations from the defendant's diary. In this connection I have the following basic observations to make:

That diary was not kept personally by the defendant Frank, but was compiled by stenographers who were present at Government conferences and other meetings with the Governor-General. The diary consists of 42 volumes with not less than 10–12,000 pages of typescript; with one exception, the entries were made, not as a result of dictation by the Defendant, but in the form of stenographers' transcripts. For the greater part, and this is evident from the Diary itself, the authors of this Diary did not record the various speeches and remarks word for word, but made a summarized version in their own words. The entries in the diary were not checked by the defendant and, again with one single exception, were not signed by him. The attendance list stapled into several volumes of the diary—they are only contained in such volumes as relate to Government conferences—cannot be looked upon as a substitute for a confirmatory note. Moreover, the evidence has established clearly that very many entries in the diary were not made on the basis of personal observations, but came about through the fact that the author was told, by the participants, about the subject of government meetings or other conferences after they had taken place, and then expressed it in the diary in his own words.

Above all however it seems to me essential to point out the following:

The content of any document is of material evidential importance only in so far as the document is investigated in its entirety. The diary of the defendant Frank with its 10–12,000 pages is one uniform document. It is improper to put in as evidence certain single entries without showing the context in which alone some of them can be understood. But it is particularly improper—and this infringes the principles of any presentation of evidence—to select from some uniform whole, such as a long speech, a few sentences and put them in as evidence. In Document Book No. II I have listed a few examples of this and hereby refer to them.

As the defendant Frank himself rightly pointed out in the witness box, the diary is a uniform whole; only in its entirety can it be probative and form part of the presentation of evidence I have read through that diary of more than 10,000 pages and can only confirm his opinion. And that was why I did not use single entries in presenting my evidence, but put in the whole diary.

If I myself, in presenting evidence, have read certain single entries from the diary, and if in the course of my present address I shall quote a few more passages from it, then, just as in the case of the extracts put forward by the prosecution, their evidential value can certainly only be gauged within the framework of the whole diary.

The following may also be looked upon as having been established by the evidence: As the diaries show, and as is evident in particular from the testimony given by the witnesses Buehler, Boepple and Meidinger, the defendant Frank in his capacity of Governor-General often made two or three improvised speeches in the course of one day.

The extracts from the diary presented by the Prosecution consist for the most part of single sentences from such speeches. If we take into consideration both the temperament of the defendant and his habit of expressing himself in an incisive manner, then that is another reason which tends to reduce the probative value of these extracts from the diary. And we actually do find many diary entries which flatly contradict other entries on the same subject occurring a little earlier or later.

In connection with the many speeches made by the defendant Frank, the following must not be left out of consideration, and this too may be looked upon as established by the evidence: It was a foregone conclusion that the defendant Frank, as open champion of the idea of a State resting on law and of the independence of the judiciary, would come into increasingly sharp conflict with the representatives of the Police-State System; this developed to an ever greater degree in the course of the war both within the Reich territory and in occupied country. The representatives of the police-state however were Reich Fuehrer SS Himmler and, for the area of the Government-General, the Higher SS and Policeleader East, above all and in particular SS Obergruppenfuehrer and General of Police Krueger. The relations between the defendant Frank on the one hand and Reich Fuehrer SS Himmler and his representative Obergruppenfuehrer Krueger on the other, had been extremely bad even at the time when the Government-General was established. They deteriorated still more as the divergence of outlook concerning the tasks of the police came ever more openly to the fore and the defendant Frank was forced to make increasingly strong protests to the Chief of the Reich Chancellery, Dr. Lammers, and to the Fuehrer himself concerning the violent measures taken by the Security Police and the SD.

As I have already mentioned, the Governor-General, lacking an executive of his own, had on the other hand no choice but to make repeated attempts to coordinate the work of the general administration with that of the police, in order to be in a position to carry out any administrative work at all. Obviously these objectives demanded, at least on the face of things, a degree of conciliation towards the general attitude of the security police and above all of the Higher SS and Policeleader East. Moreover the evidence has further established that the tension existing between the Governor-General and the Higher SS and Policeleader often reached such a degree that the defendant Frank could not but feel himself menaced and, to quote the words of the witness Buehler, was no longer a free agent and master of his own decisions.

The testimony of the witnesses Bach-Zelewsky and Dr. Albrecht leave no possible doubt on this point. Quite rightly therefore the witness Dr. Buehler also pointed out that the defendant Frank expressed himself with particular vehemence when the Higher SS and Policeleader or the Commander in Chief of the Security Police and the SD were present at conferences and that his utterances were made on quite a different note when he was speaking to an audience composed only of members of the administration. Even a cursory inspection of the diary will confirm this. All these circumstances must be taken into consideration in assessing the substantive evidential value of the defendant Frank's diary. It should also be noted that these diaries constituted the only personal property that Frank was able to rescue from the castle at Cracow. On his arrest, he handed all the diaries to the officers who took him into custody. It would have been an easy matter for him to destroy these diaries.

Your Lordships!

I now turn to the separate accusations brought against the defendant and their legal aspects. The defendant Frank is accused of having approved, led and participated in war crimes and crimes against humanity in the administration of occupied territory.

As the law stands, it rests on the principle that only a sovereign state, not an individual, can be a subject of international law. To make international law binding on an individual, international law itself would have to lay down that a certain set of facts constitutes a wrong and that the rule thereby established is applicable to an individual creating such set of facts. Only in that way can individuals, who under the law as it stands are subjected only to municipal criminal law, by way of exception be bound directly by international law.

Deviating from this rule, operative international law, in exceptional cases only, permits a State to punish the national of an enemy State who has fallen into its power if, before his capture, he had been guilty of infringing the rules of war. But even here punishment is excluded if the deed was not committed on the person's own initiative but can only be attributed to his State of allegiance. Moreover, the conception of war crimes and their factual characteristics are the subject of great controversy both in judicial decisions and in legal literature.

Nor do the Hague Rules on Land Warfare, which form the Annex to the IVth Convention on the Laws and Customs of War on Land and purport to be a codification of certain sections of the law of war; nor do these Rules list any sets of facts which could be interpreted as a basis for the criminal liability of individuals. In Article 3 of this Convention it is on the contrary expressly provided that not individuals but the State that has infringed the

Rules may under certain circumstances be liable to pay an indemnity and is also responsible for all acts done by persons belonging to its armed forces.

In connection with the Hague Rules for Land Warfare, of 1907, the following should also be noted:

The principles therein enunciated were evolved from the experience of wars in the 19th Century. Those wars were confined in the main to the armed forces directly concerned in them.

Now, even the first World War overstepped this framework, and not only in respect of the geographical extent of the bellicose conflicts. On the contrary, the war became a struggle for extermination of the nations concerned, a struggle in which each belligerent party utilized the whole of its war potential and all its material and imponderable resources. War technique having been meanwhile brought to perfection point, the second World War was bound to destroy altogether the framework set up for the conduct of war by the Hague Rules for Land Warfare. That is easily shown by ocular demonstration: the present condition of Europe today reveals. If we remember in addition that in Germany alone the greater part of almost every city has been destroyed as a result of bombing raids; and not only that, but that considerably more than a million civilians thereby lost their lives and that in a single major raid on the city of Dresden 300,000 people were killed, then it will be possible to realize that the Hague Rules for Land Warfare (at any rate in respect of many activities coming under the rules of war) can no longer be an adequate expression of the laws and customs to be observed in waging war. But if any doubt should exist on this subject, then that doubt will certainly be removed on contemplation of the consequences of the two atom bombs which razed Hiroshima and Nagasaki to the ground and killed hundreds of thousands of people.

Taking these circumstances into consideration, it is not possible to adduce the provisions of the Hague Rules for Land Warfare, even indirectly and by way of analogy, to establish individual criminal liability.

Seeing that this is the case, it must be looked upon as impossible to give a clear, general definition of the factual characteristics of so-called war crimes. Referring to the fact that even Article 6 of the Charter of the International Military Tribunal only purports to furnish a list of examples it will be realized that the question as to whether a certain line of conduct amounts to the commission of a war crime or not, can only be answered on the merits of each particular case and then only if all the circumstances are taken into consideration.

In the course of the presentation of evidence for the personal responsibility of the defendant Frank, the Prosecution submitted as Exhibit USA 609 (864–PS) minutes of a conference held by the Fuehrer with the Chief of the OKW on the future form of Polish relations to Germany. This Conference took place on October 17, 1939. It is alleged that these minutes alone, in which the administrative goals of the defendant Frank in the Government-General are said to be established, reveal a plan or conspiracy at variance with the laws of warfare and humanity. This is an inadmissible conclusion at least in so far as the defendant Frank is concerned. The Prosecution was unable to prove that the Fuehrer entrusted the defendant Frank with a task in conformity with the administrative aims demanded in that conference. Moreover, this seems very unlikely, because the directives laid down at that conference dealt mainly with measures which could only be carried out, not by the general administration, but alone by the Security Police, the SD and the other organs and offices under Reichsfuehrer SS Himmler. In this connection special mention should also be made of the powers entrusted to Reichsfuehrer SS Himmler (before the date of that conference) in his capacity of Reich Commissioner for the Consolidation of the German Nation. Actually there is at the end of document USA–609 a reference to a commission with which Himmler was charged. In consideration of the fact that the defendant Frank, in the course of a short interview with Hitler about the middle of September 1939, had been told to take over the civil administration of occupied Polish territory as Chief of Administration and had not seen Hitler for a very long time after that, it can safely be assumed that the directives laid down at the conference between Hitler and the Chief of the OKW were intended, not for the defendant Frank, but for Reichsfuehrer SS Himmler, who was the only person to have the necessary executive organs at his disposal.

Another document to which the Prosecution has referred and which is also alleged to show the criminality of the administrative aims of the defendant Frank is USA Exhibit 297 (EC 344–16). The content of this document is a discussion which the defendant Frank is said to have had on October 3, 1939, with a certain Captain Varain. The defendant Frank testified in the witness box that he had never made any such or similar statements to an officer. Moreover, a comparison of the dates shows that this conversation, even if it should have taken place, can have no connection with the subject of the conference between the Fuehrer and the Chief of the OKW, the latter not having been held till October 17, 1939, that is at a later date.

Not within the framework of the evidence presented in connection with the personal responsibility of the defendant Frank, but in connection with the accusation of so-called "Germanization", a document was submitted with the number USA Exhibit 300 (661–PS). This is a memorandum entitled, "Legal aspects of German Policy towards the Poles from the ethno-political point of view." According to a note on the title page, the legal part of this was to serve as a model for the Committee of the Academy for German Law which dealt with legal nationality questions. This document can have no probative value in connection with the personal responsibility of the defendant Frank. He testified in the witness-box that he had given no instructions for the writing of that memorandum and that he was not aware of its content. Over and above this, it would seem that no substantive evidential value can be attached to that document within the scope of this whole trial.

Nor is it evident from the memorandum who wrote it or who gave instructions that it should be written. Its whole form and content would seem to show that it is not an official document, but rather the work of a private individual. It was stated to have been found at the Ministry of Justice in Cassel. But in actual fact there has been no Ministry of Justice at Cassel for many decades. All these circumstances would point to the material probative value of this document as being at least extremely small.

But whatever the evidential value of minutes of conferences that took place in the year 1939 on the occasion of the establishment of the Government General, the following should be pointed out: In judging the conduct of the defendant Frank it is not of such essential importance to know what Hitler, he himself, or other persons said on one occasion or another, but what policy the defendant Frank actually pursued towards the Polish and Ukrainian peoples. And here there can be no possible doubt, on the basis both of the general result of the evidence and in particular of entries in the diary of the defendant himself, that he repudiated all tendencies and measures designed to effect germanization. That is shown with great clarity by the extracts from the diary which I have submitted to the Tribunal. Thus, on March 8, 1940, he declared at a meeting of department chiefs, i.e., to an audience of men who as leaders of the various main departments were deputed to put his directives into practice; at this meeting he declared the following:

"* * * I have been charged by the Fuehrer to look upon the

Government-General as the home of the Polish people. Accordingly no germanization of any sort or kind is possible. In your departments you will please see that the two language principle is strictly observed; you will also point out to district and provincial officers that no violence is to be used in opposing such safeguarding of separate Polish existence. We have in a certain sense herewith taken over on trust from the Fuehrer the responsibility for Polish national life * * *."

This declaration alone makes it apparent that the directives laid down in the Conference between Hitler and the Chief of the OKW on October 17, 1939 and contained in document USA 609 (864–PS) cannot possibly have been made the subject of the duties with which the defendant Frank was charged. On the other hand, in view of the entire work done by the Higher SS and Policeleader East from the first day of his appointment, it can safely be assumed that it was Reichsfuehrer SS Himmler whom Hitler charged with carrying out the directives laid down at his conference with the Chief of the OKW.

A diary entry of February 19, 1940 is on the same lines; in this the defendant Frank advocates the formation of a Polish government or regency Council.

On February 25, 1940, at a service conference of department chiefs and district and municipal commanders of the District of Radom, the defendant Frank gave out in program form his directives regarding general administration. On this occasion the defendant Frank said among other things:

"1. The Government-General comprises that part of the occupied Polish area which is not a component part of the German Reich.

"2. The Fuehrer has decreed that this territory is to be the home of the Polish people. The Fuehrer and General Field-Marshal Goering have impressed on me over and over again that this territory is not to be subjected to germanization.

"3. In accordance with the instructions we have received under the Fuehrer's decree Polish laws will remain in force here."

On June 7, 1942 the defendant Frank stated word for word as follows:

"It is not as rulers by violence that we come and go in this country. We have no terroristic or oppressive intentions. Welded into the interests of Greater Germany, the living rights of the Poles and Ukrainians in this territory are also safeguarded by us. We have not taken away from the Poles and Ukrainians either their churches, their schools or their education. The Germans do not wish to denationalize by violent means. We are sufficient unto ourselves, and we know that people must be born into our community and that it is a distinction to belong to it. And that is why we can look the world in the face with this our work."

These examples could be amplified by many more, which all show clearly that the measures taken, at any rate by Frank, were intended to care for the Polish nation and that he repudiated any terror policy.

I come now to the so-called "peace-enforcing action." When the campaign against Poland had ended in September 1939, that did not mean that all resistance had ceased. Very soon afterwards new centers of resistance sprang up, and when on April 9, 1940, German troops occupied Denmark and Norway and on May 10, 1940, the German Western Army had begun their attack, the leaders of the Polish resistance movement believed that, in consideration of the general political and military situation, the time for action had come. This resistance movement was all the more dangerous because scattered but not inconsiderable remnants of the former Polish Army were active in it. A large number of entries in the diary of the defendant Frank show that the security situation worsened from day to day during that period. Here for instance is an entry for May 16, 1940: "* * * The general war situation requires that the most serious consideration be given to the internal security situation of the Government General. A large number of signs and actions lead one to the conclusion that there exists a widely-organized wave of resistance on the part of the Poles in the country, and that we are on the threshold of violent happenings on a large scale. Thousands of Poles are already organized in secret circles; they are armed and are being incited in the most seditious manner to commit all kinds of violence."

In consideration of this menacing general situation, the order was given, as the diary shows, by the Fuehrer himself, that in the interest of the maintenance of public security, all measures were to be taken to suppress the imminent revolt. That order was given through Himmler to the Higher SS and Policeleader. The administration of the Government-General had at first nothing to do with it. It intervened however, in order as far as possible to prevent the security police and the SD from taking violent measures and to make sure that innocent people should under no circumstances lose their lives. The testimony given by the defendants Frank and Seyss-Inquart in the witness box and the evidence given by the witness Dr. Buehler have shown that the efforts made by the administration of the Government-General were in so far successful as all the members of the resistance movement rounded up by this special action were brought before a drumhead court-martial introduced by a decree issued in the year 1939; and moreover, the decisions of this court were not carried out before being submitted to a Board of Pardon which in many cases modified the sentence. The Chairman of the Pardon Board was, until his appointment as Reich Commissioner for the Netherlands, the defendant Dr. Seyss-Inquart. As his testimony revealed, no less than half the death sentences pronounced by the summary court were commuted to imprisonment by the Pardon Board. For the rest, as regards the so-called extraordinary peace-enforcing action, I refer to the oral testimony and to the extracts from the diary of the defendant Frank which I read into the record.

Within the framework of the charges against him personally, the defendant Frank is accused of having supported the resettlement plans of the Reich Commissioner for the Consolidation of the German nation (Himmler) and of having thereby also committed a war crime. There is no question but that resettlements, even if they are carefully planned and well-prepared, mean great hardship for those who are affected by them; in many cases a resettlement means the destruction of a person's economic existence. Nevertheless it seems doubtful whether the effectuation of resettlements constitutes a war crime or a crime against humanity, for the following reasons:

Germany today is being flooded with millions of people who have been driven from their homes and who own no property but what they carry with them. The misery thereby caused, which is bound to increase to an immeasurable degree in consequence of the devastation wrought by the war, is so terrible that the bishops of the Cologne and Paderborn ecclesiastical districts were moved on March 29, 1946, to bring this state of affairs to the attention of the whole world. Among other things they said:

"* * * Some weeks ago we found occasion to comment on the outrageous happenings in the East of Germany, particularly in Silesia and Sudetenland, where more than 10 million Germans have been driven from their ancestral homes in brutal fashion, no investigation having been made to ascertain whether or not there was any question of personal guilt. No pen can describe the unspeakable misery there imposed in contravention of all consideration of humanity and justice. All these people are being crammed together in the rump of Germany without means to found an existence there. It cannot be foreseen how these masses of people who have been driven from their homes can become other than peace-lacking and peace-disturbing elements."

My Lords!

I am not mentioning this in order to point out the enormous dangers connected with such measures, dangers which must arise alone out of the fact that in view of her envisaged deprivations of territory, Germany, with an area reduced by 22 percent as compared with 1919, will have to feed a population increased by 18 percent and that in future there will be 200 inhabitants to the square kilometer. I am further not pointing to this state of affairs to show that if the present economic policy is continued and the so-called industrial plan is maintained, Germany is heading for a catastrophe the consequences of which cannot be confined to the German people. The evidential relevance of these facts is however shown by the following:

Millions of Germans were driven from their ancestral homes in accordance with a resolution taken at Potsdam on August 2, 1945, by President Truman, Generalissimo Stalin and Prime Minister Attlee.

[The Russian Chief Prosecutor objected on grounds of irrelevancy and objection was sustained.—Ed.]

The defendant Frank is further accused of having approved and carried out a program for the extermination of Jews of Polish nationality, thereby infringing the laws of war and humanity. It is true that in a number of speeches given by the defendant Frank in his capacity as Governor-General, he revealed his point of view on the Jewish question. The extracts from the diary submitted by the Prosecution in connection with this matter comprise practically everything relevant thereto in the defendant Frank's diary of 10–12,000 typed pages. Nevertheless it shall not be denied that the defendant Frank made no secret of his antisemitic views. He spoke in detail on this question when giving his testimony in the witness box.

But the question of the importance to be attached to the diary entries submitted by the Prosecution is quite another matter. Almost all of them consist of statements made by the defendant Frank in speeches; but there has not even been an attempt by the Prosecution to prove the existence of a causal connection between these statements and the measures carried out against the Jews by the Security Police.

As a result of the evidence, in particular of the testimony given by the witness Dr. Bilfinger and Dr. Buehler it can be looked upon as certain, in connection with the secret Decree concerning the jurisdiction of the Security Police and the SD of the year 1939, and the Decree concerning the transfer of certain tasks to the State Secretary for Security, that all the measures concerning Jews in the Government-General were carried out exclusively by

Reich Fuehrer SS Himmler and his organs. That is true both of the initiation and the organization of the so-called final solution of the Jewish question.

As regards the latter, it may be said here on the basis of the testimony given by the witnesses Wisliceny and Hoess and of the documents presented by the Prosecution that these measures were undertaken on Hitler's express orders and that only a small circle of persons was concerned in their execution. This small circle was confined in the main to a few SS leaders of Department IV a 4 b of the RSHA and the personnel of the concentration camps that had been selected for the purpose.

The administration of the Government-General had nothing to do with these measures. The above facts also show that the anti-semitic statements by the defendant Frank submitted by the Prosecution have no causal connection with the so-called final solution of the Jewish question. Since a causal link must be established before the question of illegality and guilt can even be considered, it does not seem necessary to dwell further on the matter. All the less because the factual elements of many punishable offenses can only be said to exist if at least an attempt has been made, that is, if the commission of the offense has at least been begun. Under the principles derived from the criminal law of all civilized nations, the statements contained in the diary of the defendant Frank do not even constitute preparatory acts.

In consideration of the tense and sometimes extremely frangible relationship between the Government-General on the one hand and the Reichsfuehrer SS Himmler and the Higher SS and Police-leader Krueger on the other, it would also seem to be impossible to look upon the statements of the defendant Frank as acts of incitement or complicity. The evidence has shown on the contrary that all the efforts of the defendant Frank to investigate successfully the rumors about the elimination of the Jews, at least within his own administrative district, failed of their purpose. Only to complete the picture need it be mentioned that the concentration camp of Auschwitz was not in the Government-General, but in that part of Poland which was annexed to upper Silesia. For the rest, it can not be clearly seen whether the erection of concentration camps is in itself to be looked on as fulfilling the requirements of a war crime or a crime against humanity, or whether the Prosecution considers the establishment of such camps solely as part of the so-called common plan. Setting aside the crimes committed in the concentration camps, and considering the nature of concentration camps to be that in them people are confined for reasons of state and police security on account of their political opinions and without an opportunity of defending themselves in an ordinary court of law, it appears at least doubtful whether an occupying Power should not have the right to take such necessary steps as this in order to maintain public order and security. Apart from the fact that it was not National Socialists and not Germans at all who first established such camps, the following must be mentioned.

According to a statement dated January 14, 1946, by General Lucius D. Clay, Deputy Commander of the zone in Germany occupied by American troops, 250,000 to 300,000 people in that zone were at that time being detained on account of their political opinions. Obviously the occupying Power was convinced that the detention of such a large number of politically suspect persons was necessary for reasons of security and did not conflict with the provisions regulating the rights and duties pertaining to the administration of occupied territory particularly as expressed in the Hague Rules for Land Warfare.

[Dr. Kempner, U. S. associate counsel, objected on grounds of irrelevancy and objection was sustained.—Ed.]

It is not necessary to go into this matter in more detail here, because the evidence has shown that it was the defendant Frank who from the first day of the National Socialists' assumption of power fought against the police-State system and, above all, stigmatized the concentration camps as an institution which could in no way be made to harmonize with the idea of a state resting on law. In this connection I refer to the testimony given by the witness Dr. Stepp, to the defendant's own statement and above all to the extracts from the defendant's diary which I put in evidence. The evidence has further shown that the establishment and administration of the concentration camps lay within the sphere of Reichsfuehrer SS Himmler's organization. The camps, both in Reich territories and in all areas occupied by German troops, were exclusively under the command of the SS WVHA and/or the Inspector-General of the concentration camps. Neither the Governor-General nor the general administration of the Government-General had anything to do with these camps.

A further point of accusation against Frank is the charge that he supported violence and economic pressure as a means of recruiting workers for deportation to Germany. It is true that during the recent war, many Poles came to work in Germany. But in this connection the following should be noted: Even before the first world war, hundreds of thousands of Poles came to Germany as vagrant workers. This stream of vagrant workers continued to flow in the period between the first and the second world wars. In consequence of the ill-fated demarcation line, the Government-General became an area that was distinctly over-populated. The agricultural superfluity areas had fallen to the Soviet Union, whereas important industrial areas were incorporated in the Reich. Under these circumstances, because there were no riches to be found in the soil, the only valuable means of production lay in the working capacity of the population. And this, at any rate for the first few years, could not be absorbed to a sufficient extent, because the other production factors were lacking. In order to avoid unemployment and above all in the interest of maintaining public order and security, the administration of the Government-General was bound, if only for reasons of state policy, to try to transfer as many workers as possible to Germany. There can indeed be no doubt that during the first years of the administration most of the Polish workers went to the Reich voluntarily. When later, in consequence of the continuous bombing raids, not only Germany's cities, but also her factories crashed in ruins and a not inconsiderable part of Germany's capacity for the production of war material had to be removed to the Government-General for reasons of security, the aim of the defendant Frank was necessarily to put a stop to any further transfer of labor. Over and above this however, the defendant Frank had from the very beginning opposed all violent measures in recruiting labor, and alone for security reasons and in order not to create new centers of unrest, had insisted that no compulsory measures were to be used and only propagandistic methods employed. That is certain, as shown by the testimony of the witnesses Dr. Buehler and Dr. Boepple, and also by a large number of entries in the diary. In my presentation of evidence I have already referred to several of them. Thus, for example, the defendant Frank said among other things on March 4, 1940: "* * * I refuse to issue the decree demanded by Berlin, establishing compulsory measures and threatening punishment. Measures that viewed from the outside would create a sensation must be avoided under all circumstances. There is everything to be said against the removal of people by violence."

On January 14, 1944, he made a similar statement to the Commander of the Security Police: "The Governor General is strongly opposed to the suggestion that police forces should be used in recruiting labor." These quotations could be amplified by many more.

I refer further to the evidence presented by me in respect of the treatment of Polish workers in Germany. The defendant Frank continuously and repeatedly pleaded for better treatment of the Polish workers in the Reich.

For the rest, the legal position in the matter of recruiting foreign labor does not appear to be quite clear. I do not intend to go further into the legal questions pertaining to this matter.

In the literature of international law however, it is undisputed that the conception of vital stress (Notstand) as recognized in criminal law, would, in international law too, preclude illegality in the case of a violation of law committed within that framework.

If the vital interests of a State are endangered, the State may, these interests being paramount, safeguard them if necessary by injuring the just interests of a third party. Even those writers who deny the application of the "vital stress" theory to international law— they are in the minority—grant the threatened state the "right of self-preservation" and therewith the right to enforce "necessities of State" even at the cost of the just interests of other states. It is a recognized principle of international law that a state need not wait until the direct threat of extinction is at its very threshold. There can be no doubt that after the entry into the war of the United States, with which for all practical purposes the productive capacity and the military might of almost the whole world were gathered together to overthrow Germany, the German Reich was faced with a situation which not only threatened the State as such with extinction, but over and above that placed the bare existence of the people in jeopardy. Under these circumstances the right of the state leadership to make use of labor forces, even those in occupied territory, in this defensive struggle had to be acknowledged.

In addition, the following should not be passed over: The prosecution alleges that many, if not most of the foreign workers were brought to Germany by force and that they were then obliged to do heavy labor under degrading conditions. However one may look upon the evidence on this question, the fact cannot be ignored that there are hundreds of thousands of foreign workers still living in Germany who were allegedly deported thither by force. They refuse to return to their homes, although no one now attempts to hinder them. Under these circumstances it must be assumed that the force cannot have been as great, nor the treatment in Germany as bad as is alleged by the Prosecution.

Another allegation refers to the closing of the schools. It may be left out of account whether international law recognizes any criminal classification which would make the closing of schools appear as a war crime or a crime against humanity. In time of war this would seem to be all the more unlikely as it is well-known that schooling in war time was considerably reduced, not only in Germany, but in many other belligerent countries. There is all the less reason to investigate this question more thoroughly, as the evidence has shown that the schools were for the most part already closed when the defendant assumed office as Governor-General. During his whole period of office he left no means untried to reactivate not only the elementary and technical, but also the higher forms of schools. In this connection I will only mention the University courses which he initiated.

The Soviet Prosecution has presented as USSR Exhibit 335 a decree issued by the defendant to combat attacks against German reconstruction work in the Government General, dated October 2, 1943. There is no question but that this decree setting up a drumhead court martial is not in conformity with what must be demanded of Court procedure under normal circumstances. This decree can only be judged correctly if the circumstances which led to its promulgation are taken into consideration.

In general it should first be said that the reconstruction work of the administration of the Government General had to be carried on in a difficult territory and under circumstances which must be among the most difficult that have ever fallen to the lot of any administration. After the collapse of the Polish State, the German administration found so to speak an empty space in which to organize and administer. In all spheres of administration they had to start completely afresh. If in spite of the difficulties they succeeded fairly quickly in removing war damage, particularly in the communications system, then that is incontestably to their credit.

The year 1940 was however to prove the only one in which the work of restoration in the area of the Government-General could be carried out under fairly normal conditions. As the year 1941 opened, the Germans began to concentrate their troops for action against the Soviet Union, and therewith initiated a period of immense strain for the administration of the Government-General. The Government-General became the greatest repair workshop and the greatest military transit territory that history has ever known. This carried in its train an increasing deterioration of the security situation. The resistance movement began to reorganize on an intensified scale. But the menace inherent in the security situation developed to a still more alarming degree when the German armies were forced to arrest their progress in Russia and when, after the catastrophe of Stalingrad, their march forward was transformed into a general retreat. In the course of the year 1943, the activities of the resistance movement and in particular of the numerous guerilla bands in which thousands of a-social elements were grouped, reached extremes that represented a danger to any kind of orderly administration. The administration of the Government-General was forced again and again to deal with this matter. Thus on May 31, 1943, a service meeting of the government of the Government-General was held to deal with the security situation.

At that meeting the President of the Chief Department Internal Administration felt obliged to state among other things (I quote from the Diary):

"* * * In their activities the guerilla bands have revealed an increasingly well-developed system. They have now gone over to the systematic destruction of institutions belonging to the German administration; they steal money, procure typewriters and reduplication machines; destroy quota-lists and lists of workers in the communal offices, and take away or burn criminal records and taxation lists. Moreover raids on important production centers in the country have multiplied, for instance on saw mills, dairies and distilleries, as also on bridges, railway installations and Post Offices. The organization of the guerillas has become strongly military in character."

In the course of the Summer and Autumn of the year 1943, the increasing activities of the partisans and the improvement in their military organization and equipment so endangered security in the Government-General that it might perhaps under the circumstances have been better to turn over its entire administration to the appropriate army commanders, and to proclaim martial law. It is indeed not possible to describe the conditions then existing in the Government-General as anything else but a state of war. It was the period when at any moment the possibility had to be taken into account that a general revolt would break out over the whole country.

All this notwithstanding, the defendant Frank even then made every effort to thwart any violent measures by the security police and the SD under all circumstances. It was in order to exercise at least a modifying influence on the security police and the SD and to have at least some guarantee against excesses that the defendant Frank agreed to the order dated October 9, 1943, setting up a drumhead court martial.

As is quite obvious from the content of this decree, its main purpose was to serve as a general preventive. It was meant as a deterrent to the guerillas, and there can be no question but that in this it was temporarily successful. For the rest, the evidence has shown that even while this drumhead court martial Order was in operation, the Pardon Boards continued to act and that many sentences passed by the drumhead court martial were reversed by the Pardon Boards.

In the course of the present trial repeated mention has been made of the report by SS Brigadefuehrer Stroop concerning the destruction of the Warsaw Ghetto in the year 1943. USA Exhibit 275 (1061–PS). Both that report and a number of other documents reveal that all the measures in connection with the Warsaw Ghetto were undertaken exclusively on the direct instructions of Reichsfuehrer SS and Chief of German Police Himmler. I refer in this connection to the affidavit of SS Brigadefuehrer Stroop of February 24, 1946, submitted by the Prosecution as USA Exhibit 804 (3841–PS), and to the affidavit of the same date given by the former Aide-de-Camp of the SS and Policeleader of Warsaw, Karl Kaleske. USA Exhibit 803 (3840–PS). These documents show quite clearly that those measures, like all others within the competence of the Security Police and undertaken on direct orders from either Reichsfuehrer SS Himmler, the Higher SS and Policeleader East, or on instructions from the RSHA, were carried out exclusively by the Security Police and the SD, and that the administration of the Government-General had nothing to do with them.

The Soviet Prosecution has also put in evidence as Exhibit USSR–93 under Article 21 of the Charter the report of the Polish Government. That report makes no distinction between the areas which were incorporated in the German Reich and the territories of the former Polish State which were grouped together in the Government General. But with particular reference to the fact that the report makes no substantiated statements as to the personal responsibility of the defendant Frank it does not seem necessary to delve further into this voluminous document. Like the Indictment itself, the report constitutes an accusation of a general nature; it does not deal in detail with the results of investigations and with evidence which might justify the conclusions drawn in the report. The objections to be raised to the report must appear all the more valid, as—to take only one example—in Annex (1) of the report directives for cultural policy are quoted in evidence which are obviously intended to represent instructions given by the Governor-General or his administration. Actually however nothing of the kind is to be found either in the order Gazette of the Government-General or in any other documents. The witness Dr. Buehler stated in his interrogation that the administration of the Government-General had never issued such or similar directives. In consideration of this alone, it would seem at most admissible to attach substantive probative value to this Exhibit USSR 93 insofar as the statements therein made are confirmed by genuine documents and other unobjectionable evidence.

According to the Indictment and in particular according to the statements in the trial brief presented by the Prosecution, the defendant Frank is also alleged to be responsible for the undernourishment of the Polish population. Actually however the Prosecution is unable to produce any evidence to show that in the area governed by the defendant Frank either hunger catastrophes occurred or epidemics broke out. The evidence has revealed on the contrary that the efforts of the defendant Frank in the years 1939 and 1940 were successful in inducing the Reich to deliver no less than 600,000 tons of grain. That made it possible to overcome the nutrition difficulties caused by the war.

It is true that in the following years the Government-General contributed in no small degree to the war effort by itself delivering grain. But it should not be overlooked that these deliveries were made possible by an extraordinary increase in agricultural production in the Government-General. And this was in its turn made possible by a farseeing economic policy, especially by the distribution of agricultural machinery, seed corn and so on. Nor should it be forgotten that the deliveries of grain by the Government-General from the year 1941 onwards, also served to feed the Polish workers placed in Reich territory, and that in general these grain deliveries were utilized to maintain the internal balance as between the European economic systems.

On this question the following basic observations should, however, be made:

In a number of points of accusation the Prosecution has levelled reproaches against the administrative activities of the defendant Frank in his capacity as Governor-General, without making an attempt to give an even approximately adequate description of the general work of the defendant, and without pointing out its inherent difficulties. There can be no question but that such an attitude transgresses the fundamental rules of any criminal procedure. It is a recognized principle derived from the criminal law principles of all civilized states that a uniform natural process must be judged in its entirety and that its evaluation must rest on all the circumstances of the case that are in any way suitable for consideration by the Court when passing judgment. This would seem to be all the more necessary in the present case as the defendant Frank is accused of having pursued a long-term policy of oppression, exploitation and germanization.

My Lords!

If the defendant Frank had in truth had any such intentions, then he could certainly have attained his goal in far simpler fashion. It would not have been necessary to issue hundreds of decrees every year, decrees which for example for the year 1942 reached the proportions of this volume that I hold here in my hand. The defendant Frank from his first day of office set himself to integrate all the economic forces in the area under his rule and pursued in particular an economic policy which one can only call constructive. Certainly he did this partly in order to strengthen the production capacity of the German nation engaged in a struggle of life and death. But just as little can there be any doubt that the success of this measure also benefited the Polish and Ukrainian peoples. I do not intend to go into this matter in detail. I will only ask the Tribunal in this connection to take notice of the Report given by the Chief of Government on the occasion of the 4th anniversary of the existence of the Government-General on October 26, 1943. I have included this Report in the Document Books I put in evidence. It is in volume IV, page 42. The Report gives a concise summary of the measures taken and the successes achieved by the administrative acts of the defendant during those four years in all fields of industrial economy, in agriculture, commerce and transport, in finance and credit system, in the sphere of public health and so on. Only in consideration of all these facts is it possible to form an approximately correct estimate of the whole position. By way of marginal note I will add that the defendant by his administration succeeded in reducing the danger of epidemics, in particular typhus and typhoid, to a degree which had been found impossible in this area in the preceding decades.

If much of what had been achieved by the defendant Frank in the Government-General was destroyed in the subsequent fighting, that can certainly furnish no grounds for reproach against the general administration, which had nothing to do with military measures.

My Lords!

I am certainly not going to deny that in the course of the recent war terrible crimes were committed in the territory known as the Government-General. Concentration camps had been established, in which mass destruction of human beings was carried out. Hostages were shot. Expropriations took place, and so on. The defendant Frank would be the last to deny this; he himself waged a five-year struggle against all violent measures. The Prosecution has put in evidence as USA Exhibit 610 (437–PS) a memorandum which Frank addressed to the Fuehrer on June 19, 1943. In this memorandum on page 11 he listed 9 points in which he sharply condemned all the evils which had arisen in consequence of the violence practised by the Security Police and the SD and of the excesses committed by various Reich authorities, violence and excesses against which all his efforts had proved unavailing. These 9 points are in the main identical with the points of accusation against Frank. The content of the memorandum of June 19, 1943, however, shows very plainly that the defendant denies responsibility for these abuses. It reveals, on the contrary quite clearly that neither the defendant nor the general administration of the Government-General can be held responsible for the said evils, but that the whole responsibility must be borne by the institutions mentioned above, in particular the Security Police and the SD, and/or the Higher SS and Policeleader East. If the defendant Frank had had the instruments of power wherewith to abolish the evils he condemned, it would not have been necessary for him to address that memorandum to Hitler at all. He would then himself have been able to take all necessary steps. In addition to this the evidence has shown that the memorandum of June 19, 1943, was not the only one addressed to the Fuehrer on the matter. It is clear from the testimony of the witnesses Dr. Lammers and Dr. Buehler and the defendant's own statements in the witness box that from the year 1940 onwards he (the defendant) sent protests and memoranda at regular intervals of a few months both to Hitler personally and to the Chief of the Reich Chancellery. These written protests were invariably on the subject of the violent measures taken and the excesses committed by the Higher SS and Policeleader and the Security Police including the SD. But none of the protests met with success.

As can also be said on the basis of the evidence, the defendant Frank continually made suggestions to Hitler on the subject of improving relations between the administration of the Government-General and the population. The memorandum of June 19, 1943, too is cast in the form of a comprehensive political program. It includes moreover all the essential points of protest contained in a memorandum presented in February 1943 to the Governor-General at his own desire, by the leader of the Ukrainian Chief Committee. This latter memorandum was put in evidence by the Prosecution as USA Exhibit 178 (1526–PS). Such suggestions were also consistently rejected by Hitler.

Under these circumstances it is pertinent to ask what else the defendant Frank could have done. Certainly he should have resigned. But that too he did. He offered his resignation no less than 14 times, the first time as early as 1939. His resignation was rejected by Hitler as often as it was tendered. But the defendant Frank did more. He approached Field-Marshal Keitel with the request that he be allowed to rejoin the Wehrmacht as lieutenant. That was in the year 1942. Hitler refused his consent to that too. These facts allow of only one conclusion, namely that Hitler saw in the defendant Frank a man behind whose back he (with the help of Himmler and the organs of the Security Police and the SD) could carry out the measures he considered requisite for attaining the aims of his power policy.

My Lords!

One thing the defendant Frank certainly did not do. He did not join the ranks of traitors to his country. He had no part in any scheme which had as its object the elimination of Hitler and which attempted to achieve that object by means which from the outset could only have been designated as ineffective. On the other hand, the defendant Frank undertook something else.

When it became more and more obvious that Hitler and Reichsfuehrer SS Himmler were about to abolish the last remnants of a state resting on law; when it became increasingly apparent that the power of the police knew no bounds and that a police-state of the purest water was in process of development, the defendant Frank came forward and addressed four great speeches to the German public with a last appeal on behalf of the idea of a state resting on law. He did that when Hitler stood at the summit of his power. He addressed this appeal to the German public at a time when the German forces were marching on Stalingrad and into the Caucasus, when the German panzer armies in Africa stood at El Alamein, barely 100 km from Alexandria. In the course of the evidence I read some extracts from these great speeches which the defendant Frank made in Berlin, Heidelberg, Vienna and Munich. Those speeches contained a clear repudiation of every form of police-state and championed the idea of the State resting on law, of the independence of the judiciary and of law as such. These speeches found a tremendous echo among lawyers, but unfortunately not in wider circles. Nor in particular were they echoed by the men who alone would have possessed the power to ward off the threatening catastrophe.

The consequences of this attempt to avert the extinction of the idea of the state resting on law by a last great effort are well-known. The defendant Frank was deprived of all his Party Offices, he was dismissed from his post as President of the Academy for German Law. The leadership of the National Socialist Lawyer's Association was conferred on Reich Minister of Justice Thierack. Frank himself was forbidden by Hitler to speak in public. Although the defendant Frank again on this occasion sent in his resignation as Governor-General, Hitler refused to accept it, as he had always done before. The reason for this, as given in a letter from the Reich Minister and Chief of the Reich Chancellery to the defendant Frank, was that considerations of foreign policy had caused the Fuehrer again to refuse this latest request of Frank to be allowed to resign. According to everything that has emerged from the evidence in this trial it may be looked upon as certain that it was not only (and probably not even mainly) for such reasons that Hitler refused to accept Frank's resignation.

The decisive factor was obviously the consideration that it was better policy not to let the security police and Reichsfuehrer SS Himmler's other organs fulfill their appointed task openly, but rather to let them continue their work under cover, while maintaining a general civil administration under the Governor-General.

Naturally this open breach between the defendant Frank on the one hand, and Hitler and the state police system represented by Reichsfuehrer SS Himmler and the Higher SS and Policeleader East on the other, could not fail to have repercussions on the position of the defendant in his capacity as Governor-General. Still more than before the various Reich authorities now began to interfere in the administration of the Government-General. Above all however, it was quite clear from the summer of 1942 onwards that the Higher SS and Policeleader East, together with the organs of the Security Police and SD subordinated to him, took no more notice at all of any instructions issued by the Governor-General and the general administration.

Both in the Government-General and in the Reich itself legal institutions receded more and more into the background. The State was transformed into an unadulterated police-state, and developments took the inevitable course which the defendant Frank had foreseen and feared, the course which on November 19, 1941, he had outlined at a Congress of the principal section chiefs and Reich Group leaders of the National Socialist Lawyers Association in the following words:

"Law cannot be degraded to a position where it becomes an object of bargaining. Law cannot be sold. It is either there or it is not there. Law cannot be marketed on the Stock Exchange. If the law finds no support, then the State too loses its moral prop and sinks into the depths of night and horror."

2. FINAL PLEA by Hans Frank

May it please the Tribunal:

Adolf Hitler, the name predominant in this Trial, has not made, to all the German people in the world, his final statement. He in the deepest distress of his nation did not find a comforting word. He became rigid, and he did not take care of his position as a Fuehrer, but he disappeared into the dark through his suicide. Maybe it was stubbornness; maybe it was despair; or stubbornness against God and men. Perhaps he thought that he himself must perish, then the German people too may fall to the abyss. Who will ever know?

We,—and if I now speak in the term of we, then I mean myself and these National Socialists who will agree with me in this conviction, and not these fellow defendants on whose behalf I am not entitled to speak—we must surrender the German nation to its State without a word and in the same way. We merely want to say now, you will have to see to it how you can deal with this collapse with which we leave you. Even now, even today, and perhaps like never before, we have tremendous spiritual responsibility.

At the beginning of this long way of ours we did not think that the turning away from God would have such disastrous deathly consequences and that, as a matter of course, we might one day be involved deeply in this guilt. At that time we could not have known that so much faith and so much will to sacrifice on the part of the German people could have been so badly administered by us.

Thus, by turning away from God, we have come into shame and we had to perish. It was not because of technical deficiencies and unfortunate circumstances that we have lost this war, nor was it misfortune and treason. God, most of all, has passed sentence on Hitler and carried it out against him and the system which we served, far away from God as we were. Thus may our people be called back from the Road on which we and Hitler have led them.

I beg our people that they may not come to a standstill in this development, that they may not proceed in that direction, not with one single step; because Hitler's road was the way without God, the way of refusing to believe in Christ, and, in its final point, the way of political foolishness, the way of disaster, and the way of death. His walk, more and more, became the walk of a frightful adventurer without conscience, without honesty, as I know it today at the end of this trial.

We, the former bearers of power, call upon the German people to return from this road which, according to God's justice had to lead us into disaster and which will lead into disaster every one who would try to walk on it, or continue on it everywhere in this whole world.

Over the graves of the millions of dead of this frightful second world war this state trial occurred, lasting for many months, as the central, legal sequence. Their spirits and ghosts drifted across this room accusingly.

I am grateful that I was given the possibility of a defense and with that the possibility of justification against the accusations raised against me.

I remember all the victims of force and horror of the dreadful events of war. Did not millions have to perish without ever being asked and ever being heard? I have surrendered the war diary dealing with my statements and activities, and that at an hour when I lost my liberty. If I really once have been hard, then it was at that moment of the unveiling of my actions in the war and everything that I have done.

I do not wish to leave behind me in this world the hidden guilt undealt with.

In the witness stand I have assumed responsibility for all those things for which I must be responsible. I also recognized that degree of guilt which it must be my part to assume as a fighter for Adolf Hitler, his movement, and his Reich. I have nothing to add to the words of my defense counsel.

There is yet one word which I have to rectify, spoken by me.

In the witness stand I mentioned a thousand years, which would not suffice to erase the guilt brought upon our people because of the actions of Adolf Hitler. Not only the activities of our opponents, carefully kept away from these proceedings, with reference to our people and our soldiers, but also tremendous masses of the most awful crimes, I have only now heard, have been committed, mostly in East Prussia, Silesia, Pomerania and the Sudetenland by Russians, Poles, and Czechs against Germans, and are still being committed. They have, even today completely balanced any possible guilt on the part of our people.

Who is to judge these crimes committed against the German people, one day?

With the certain hope that from all the horror of the time of war and all the developments even threatening today perhaps a lasting peace may yet arise in which even our nation may have its beneficial participation, I come to the end of my final statement.

God's eternal justice will be the force under which our people will flourish and to which alone I submit.

X. WILHELM FRICK

1. FINAL ARGUMENT by Dr. Otto Pannenbecker, Defense Counsel

Mr. President, Gentlemen of the Tribunal:

The prosecution has charged defendant Frick with criminal actions according to Article 6, items a, b, and c of the Statute.

I should like first to examine the question whether Art. 6 of the Statute, with the series of penal cases contained therein, is to be considered as the authoritative criterion of the actual penal law which shall state, in a manner irrevocably binding for the Tribunal, those actions that are to be regarded as criminal, or whether Art. 6 of the Statute concerns a rule of procedure defining the competence of this Tribunal for specific situations.

This latter concept has been implied in the prosecution's exposition of the case by Sir Hartley Shawcross's remark that Art. 6 fills a gap in international penal procedure but that the actual penal law to be applied to the defendants has already been previously standardized by positive laws. Equally to the point is Part II of the Statute, beginning with Art. 6 and entitled: "Competence and general principles," and it may be inferred therefrom that Art. 6 purports to establish a ruling as to the competence of this Tribunal to engage in a procedure for specific series of crimes.

Sir Hartley Shawcross's statements were directed against the objection that it is inadmissible and in contradiction with a basic legal principle, to punish someone for an act which had not yet been forbidden at the time of its perpetration; an objection which has as a basis the conception that the Statute has created a new material penal law with retroactive effect.

It must be tested if the interdiction of retroaction of penal laws is so important a legal principle that it should not be infringed. I need not state to the Court the reasons for which this legal principle found general recognition in all civilized countries, as a presupposition and a basic precept of Justice.

In contradiction to this the Prosecution has in its speech charged the defendants with the fact that they themselves had continuously disregarded law and justice, and inferred from this that the defendants in this trial could not as far as they were concerned appeal to such a legal principle. I do not believe, however, that such an argument can be decisive in these legal proceedings.

The prosecution has denied the still more far reaching question if it would not have been better to repay a person with the same coin and not give the defendants of this trial any possibility at all to defend themselves in an ordered legal procedure. However such an attitude, simply to apply the power of the victor on the defendants, has purposely not been assumed by the signatory powers for reasons presented in detail by the prosecution. On the contrary, Sir Hartley Shawcross has appealed to the Tribunal to use in this procedure, I quote, "the undisputable basis of international custom."

However, if one is to proceed in such a manner, then a trial must ensue according to equal principles of law in reference to the question whether the deeds with which the defendant is incriminated are to be regarded as criminal action for which, according to the recognized basis of international custom, punishment is possible. On the basis of international principles of law, there should be no argument if the use of a fundamental law, as is the prohibition of a retroactive law, in its application is to be made dependent on whether or not the defendants concerned themselves with justice and injustice. The decision of the signatory powers, on the basis of considerations which have been seriously weighed to subject the conduct of the defendants to a judicial examination observing all principles of international custom, signifies not only the adherence to legal procedure equipped with all assurances for fair trial, but this decision by the signatory powers also signifies the observance of the fundamental principles of a materialistic guarantee of justice and to these principles belongs the prohibition of retroactive laws.

In this connection I should also like to point to the fact that the decreeing of the retroactive validity of penal laws, when so ordered by the National Socialist government for certain, individual cases, aroused horror in the entire civilized world. At that time, the violation of such a principle of law was generally condemned as a deplorable retrogression in culture.

I also ask the Tribunal to bear in mind that one of the first measures taken by the occupation powers for delivery from National Socialist abuses of law, was to declare void any laws instituting retroactive application of the substantive penal code.

In view of this situation, there exist valid reasons, I believe, which argue that according to its caption, Article 6 of the Charter be regarded an agreement on the jurisdiction of this Tribunal, all the more so as the signatory powers have already and with so much emphasis gone on record for a strict and uniform reobservance of the prohibition against retroactive penal laws.

On the basis of such an interpretation, whereby Article 6 establishes the jurisdiction of this Tribunal, it is up to the Tribunal, through its own decision not only to determine whether the charges on which the indictment is based are substantiated, but also to rule on the legal question as to whether, for the facts established in each case by the prosecution, substantive criminal law provides a law which makes punishment possible. To revert in this way to provisions of substantive criminal law in existence at the time the act was committed does not mean it would be impossible for this Tribunal to call the accused, to account for offenses which are punishable under all circumstances. There are, however, a number of restrictions resulting from this which in the opinion of the defense, however, it would be better to accept rather than to violate a principle so essential to a just procedure as is the prohibition against retroactivity in criminal laws.

I am therefore of the opininon that it is entirely possible and not inconsistent with the need for a just expiation for actual war crimes to interpret Article 6 according to its caption as an agreement on the jurisdiction of this court to try criminal cases but not as a new kind of substantive criminal law.

[Defense Counsel omitted material pertaining to conspiracy since it had been pleaded by Dr. Stahmer.—Ed.]

The Charter does not compel the interpretation that a defendant is responsible also for such acts of commission as exceed the measure of his participation in the common plans. The wording of the Charter "in the execution of a common plan" does not contradict the interpretation that the Charter establishes responsibility for acts of commission which remained within the scope of the plan discussed.

The acceptance of responsibility for the actions of others corresponds to an equal extent to a judicial precept, but beyond it would violate essential legal principles.

The defense therefore advocates the conception that, as far as the actions of others are concerned and for which a defendant is supposed to be liable, the proof cannot be foregone that these actions, in the manner of their execution, have corresponded to the intention of the defendant.

To give an example:

The participation of a defendant in rearmament against the regulations of the Versailles Treaty does not in itself justify the assumption that this defendant has also desired a war of aggression, which was later on planned by others, in the further shaping of the plan to mobilize the German people.

I should like now to refer to the separate groups of crimes charged against the defendant Frick and namely first, the assertion of the prosecution that the defendant participated in the planning and preparation of wars of aggression. With regard to the problem, as to whether a war of aggression is a criminal offense according to the concepts of law for the period in question, I refer, in order to avoid repetitions, to the statements of Professor Jahrreiss, with which, in the name of the defendant Frick, I completely agree.

In virtue of these convincing statements, there is only one possibility of punishing cooperation in a war of aggression as a criminal offense that can be perpetrated by single persons, if, namely, in opposition to the statements of Sir Hartley Shawcross, the Charter is applied as a rule of substantive penal law, which has for the first time, formulated with retroactive effect that a war of aggression is a criminal offense by individual persons. Considering the other interpretation, which regards Article 6 of the Charter as a procedural regulation on jurisdiction of this court, the defense holds that the deduction is cogent that the court is indeed declared competent to judge offenses against peace, but that so far a criminal guilt of the individual defendants is not proven, because one condition for this is lacking, namely, the possibility of establishing that the defendants have offended against a principle of generally valid international custom or national law which characterized the war of aggression at the time of their act and declared it punishable as a crime of which a single individual could be guilty. For the statesmen during the period between the two world wars neglected to establish adequate measures of general validity by which it would have been made clear that anybody who after the first awful slaughter of nations organized second world war would run about with a rope around his neck.

The corresponding statements of the prosecution that such rules of international law are necessary, are absolutely compelling, but the fact cannot be overlooked that such rules, however, were not created at the right time.

A missing rule of law cannot be subsequently cut out for a special case, and replaced by an order of procedure or by the sentence of a court, whose task is to apply the general law, but not to create for a single special case. I shall now turn to the actual statements of the prosecution concerning a participation by the defendant Frick in the planning and preparation of wars of aggression.

The prosecution sees such an activity in Frick's earliest cooperation with the Party which he continued until the year 1933, in order to bring Hitler to power.

The prosecution appraises in a similar way the subsequent activity of Frick after the taking over of the government by Hitler, when he worked to consolidate the power of the Party and its leader through measures of domestic policy especially by his participation to the legal measures, by which an armed force (Wehrmacht) war created, against the stipulations of the Treaty of Versailles, and finally his collaboration in measures by which direct preparations were made in case of war.

Proceeding from the interpretation that only a deliberate participation of the defendant in the preparation of a war of aggression is of penal importance, I shall now enter upon the question as to whether the prosecution has proved that the defendant recognized his by collaboration in the advancement of the Party and its aims as a preparation for war, and wanted it to be so, and therefore deliberately helped to bring about war himself.

In this connection the prosecution has stated that Hitler and his Party from the very beginning openly pursued the aim of bringing about a change in the foreign political situation of Germany, by means of war.

On the basis of this statement the prosecution has declared that no special proof is necessary that each of the defendants, in working for Hitler and his Party, also knowingly collaborated in the preparation of a war of aggression.

As proof that Hitler and his Party had from the beginning planned a war of aggression, the prosecution refers to the Party program, which names as one of its crimes, the abolition of the Treaty of Versailles. With not one word, however, is it said in the Party program that this aim should be achieved by force of arms.

From the Party program, however, as well as it has appeared, among others, from the testimony of the defendant von Neurath, there is nothing to prove an intention existing from the very beginning to wage a war of aggression. Nothing different is found in the official publications of the Party from the time of Hitler's assumption of the government.

As the Party did not, on the basis of its official publication, reveal the intention to compel the revision of the Treaty of Versailles by force of arms, it was therefore, ever before 1933 permitted outside the territory of the Reich, as in the year 1930 in Danzig with the assent of the High Commissioner of the League of Nations and of the Polish President.

Since the time of his assumption of power on January 30th 1933, Hitler as responsible head of the Government, took a quite unequivocal attitude in regard to the ways and aims of his foreign policy, whether in official speeches and discourses or in private conversations.

Unchangingly and upon every occasion he has, since his access to power, stressed his unconditional will for peace and his abhorrence of war, and he always defended this attitude with convincing reasons. He repeated again and again that he intended to obtain certain revisions of the Versailles treaty by peaceful means only.

I need not repeat the appropriate quotations from Hitler's speeches, which already have been submitted by the prosecution, to prove to what extent Hitler deceived the world and the people he ruled by his peace speeches, which were repeatedly supported by a peal of church bells to increase their effectiveness.

And the world, including the German people has taken seriously these speeches which he, as responsible Government chief, made again and again.

Warning voices which at an early stage became convinced that Hitler wanted war remained, however, a hopeless minority throughout the world.

The Prosecution has repeatedly stressed this world belief which took Hitler's assertions of peaceful intentions seriously, and the best proof of this peace delusion of even the foreign statesmen who also knew the Party's program, lies certainly in the fact that these statesmen neglected to such a great extent to create defensive armaments against Hitler's war of aggression. Nobody in Germany and in the world who was not directly initiated into Hitler's most secret plans seriously believed in it.

From the Party program and from isolated wild speeches, made before 1933 in the period of parliamentary opposition, it is not possible to prove a continuous preparation for a war of aggression since the twenties, supposedly discernible by anybody who looked the Party program through. The Prosecution now pretends further that, even if the warlike intentions were not discernible in a general way, the intention of Hitler to prepare a war of aggression must have been clearly visible to defendant Frick by reason of the duties which the latter fulfilled since January 30th 1933 in his capacity as Reich Minister for the Interior.

These duties included measures towards the strengthening of the political power of Hitler and his Party at home. In this connection the Prosecution referred to the collaboration of Frick in the legal decrees by means of which the opposition against Hitler's system of government was destroyed in parliament and in the country, further the legislative measures which eliminated a true self-administration in the cities and rural communities, furthermore legislative and administrative decrees by which opponents of the National Socialist system were excluded from taking any part in the business of the State and in economic life.

The prosecution has submitted that, without these measures, Hitler could not have conducted another war, the beginning of which, promising such success, presupposed of necessity a complete destruction of opposition in the country and the establishment of the absolute dictatorship of Hitler.

Yet in all the measures I have enumerated, any direct connection with the preparation for war is lacking.

These measures had also their meaning and significance without any connection with a forthcoming war, if considered purely as projects on a National Socialist domestic policy. It has not been proved whether the defendant Frick had furthermore been informed of Hitler's further plans after a strengthening of power at home and for pursuing the aims of their foreign policy of the party by other than peaceful means, but to enforce them by war.

By establishing retrospective facts that the increase of his domestic authority was Hitler's presupposition for his later known war intentions, nothing has been achieved unless the proof is forthcoming, that Hitler had from the beginning aimed at authorative power in the domestic sphere as a first step toward the carrying on of war, and that Frick was aware of this when he took part in the activities of the internal policy of which he was in charge.

Furthermore: as they were purely domestic measures, according to the provisions of the Charter, they do not come under the jurisdiction of this Tribunal.

There is no true evidence, and it must be admitted that Frick as a typical Home Office civil servant considered his measures as absolutely independent drives with us the scheme of domestic policy, which however had nothing whatsoever to do with the solutions by force of questions of foreign policy.

Neither does another view of the situation derive from the measures dealing directly with Germany's rearmament, i.e., the reintroduction of general conscription and the occupation of the demilitarized zone of the Rhineland.

In his capacity as Reich Minister for the Interior, the defendant issued the orders of the civil administration for the recruitment of men liable for military service, and he therefore himself signed the Armed Forces Law.

But these measures by themselves could not be considered preparative ones for a war of aggression.

The reintroduction of compulsory military service and the resumption of military sovereignty over the demilitarized Western Zone, was explained by Hitler himself to his collaborators and the world by arguments. The reasoning of which was then widely accepted, and after the first shock many foreign statesmen still believed in Hitler's well-founded assurances of peace, and advocated the presumption that there was no reason to fear any belligerent intentions of Hitler. I refer to the document 789–PS–USA Exhibit 23, according to which on 23 November 1939 Hitler personally declared to his Commanders-in-Chief that he had created the Wehrmacht in order to make war.

But Hitler cleverly obscured this intention by another argumentation which even at that time still found credence in Germany and abroad and, as proved by the evidence, even his collaborators in his own Cabinet who had not been initiated into his secret plans, believed in it.

It thus happens that several defendants refer to the fact that they agreed in the reconstruction of the German Wehrmacht, though contrary to the provisions of the Versailles Treaty, but that they never wanted another war and did not consider that by collaborating they would contribute to the planning of a war of aggression.

As to the defendant Frick: According to the conception of his defense no proof was given that Hitler had informed him of his belligerent plans, and he therefore cannot be charged with collaborating in the reconstruction of the Wehrmacht as an intentional contribution to the planning of a war of aggression.

A similar situation arises from the defendant's activity in establishing the civil administration in general in the event of a possible war, a task with which the defendant was charged as a General Plenipotentiary for the Administration of the Reich by the second Reich Defense Law, dated 4 September 1938.

I beg to emphasize that the position of "General Plenipotentiary for the Administration of the Reich" was only created by the second Reich Defense Law of 4 September 1938, thus had not been included in the first one of 31 May 1935.

Long before, even before 1933 Ministerial Counsellors held conferences dealing with the subject: "Reich defense," and which, since 1933 met at irregular intervals as "Commission for the Defense of the Reich," as stated in the documents submitted by the prosecution. These meetings had nothing to do with an agreement to wage war of aggression, they dealt with general questions of Reich Defense Law of 21 May 1935 the organization for Reich Defense was more closely coordinated, particularly by the appointment of the General Plenipotentiary for the War Economy, and at his interrogation the defendant Schacht explained in detail, that the purpose of his assignment was not preparation for a war of aggression according to the tasks and regulations to be found in the first Reich Defense Law, but the organization of economy for defense, in the event of a war of aggression by other States.

It is not different with the position of the Plenipotentiary General for Reich Administration as it was created by the Reich Defense Law of 4 September 1938 which was delegated to the defendant Frick on the basis of his position as Reich Minister of the Interior.

This position meant the coordinated establishment of the entire civil administration for the purposes of Reich defense. According to documents which have been submitted to the Tribunal, it may have been that Hitler wanted the war at the time when he instigated, but it is nevertheless relevant for the defense of the defendant, whether Frick at that time was able to recognize the aggressive intentions of Hitler from the law itself and from its preliminary work or from other evidence or information which was communicated to him at that time.

The law itself does not allow the recognition of Hitler's intention to use it as an instrument of preparation for war of aggression in the scope of civil life.

The kind of tasks which were given to the defendant Frick in his capacity as Plenipotentiary General for Reich Administration had to do merely with the concentration on the domestic administration of Germany in case of a possible war or of a threat of war.

The mode of expression of the law is such that it speaks only about the defense of the Reich in case of a war. It speaks about the "state of defense" and mentions the case of a "surprise threat to the Reich territory," at which occurance certain measures must be taken.

On the other hand the law does not indicate by any hint that Hitler himself planned to bring about a war and according to the repeatedly discussed principle of Hitler not to divulge his plans anymore to anyone than the respective person had to know for his own work—which principle was strictly adhered to even with his closest collaborators—it should not be assumed nor has it been proved that when giving the order for this law to the Ministry of Interior anything else was communicated than the requirement to take precautionary measures, by means of concentration of powers of the domestic administration of the country, against the possible attack of the Reich territory by other states.

It is not necessary for me to state in detail, that such a measure cannot be considered as premeditated preparation for a war of aggression when the former is declared essential to the competent agencies of the domestic administration for the defense of the Reich against the threatened attack by another state, which Hitler understood to feign very cleverly for all those who did not need to recognize his secret plans and who nevertheless should understand his armament and the organization of the state ordered by him for case of war.

I will deal now very shortly with some further documents which have as their object the activity of the defendant Frick as Plenipotentiary General for Reich Administration.

Frick spoke in his speech on 7 March 1940 about this position—Document 2608–PS, USA Exhibit 714—and stated that the planned preparation of the administration for the possible event of a war has been made during the peace by the appointment a Plenipotentiary General for Reich Administration.

This speech therefore merely confirms that which is already revealed by the text of the law.

The same applies to Document 2986–PS, USA Exhibit 409, an affidavit by the defendant to the same effect.

Neither is, therefore, according to this law, the position of the General Plenipotentiary for the Reich Administration as combined with the appointment of a General Plenipotentiary for Economy and the function of the Chief of the OKW, susceptible of reference as a "Triumvirate" holding governmental authority in Germany.

Nothing has ever been known either inside or outside Germany of a government by such a Triumvirate and witness Lammers too has referred to the strictly subordinate tasks performed by these persons by virtue of orders received, tasks which had nothing to do with the preparation of a war of aggression.

Another field of activity of the defendant is likewise taxed by the prosecution as participation in preparation for a war of aggression, namely, Frick's work for the "Association for Maintaining Germanism Abroad." I am referring to Documents Frick Exhibit No. 4 and 3258–PS, the latter submitted as GB 262.

Both documents reveal that Frick supported the said Association and aided its cultural efforts as a union for the promotion of German cultural relations abroad. It cannot, however, be gathered from the documents that Frick extended any activity whatsoever for the furtherance of the aims of a so-called "Fifth Column" abroad.

Another document, from which the prosecution gathered the approval of the policy of the aggressive war by Frick, is the affidavit of Messersmith, 2385–PS, USA Exhibit No. 68. This affidavit has been characterized by several defendants as incorrect and the defendant Schacht in particular demonstrated at his examination that in essential points it cannot be correct at all. The prosecution has not been able to subject the witness to a cross-examination. I raise a protest for Frick against any use of the affidavit, all the more so as an additional clarifying questioning of the witness through written questionnaires only led to the result that the witness by using general phrases avoided giving concrete answers to the questions put to him. The answers in the questionnaires show plainly enough that Messersmith cannot make concrete declaration at all and that he obviously was considerably deceived by his memory in his affidavit. This may be due to his old age. I do not believe that his affidavit, which has been refuted in essential points, can be used for passing legal judgment.

As to the point to be established by evidence, that is whether the defendant Frick participated in conscious preparation for war of aggression, the prosecution submitted a further document, D–44, USA Exhibit 428. From this document it is seen that the Reich Ministry of the Interior is supposed to have given a directive in the year 1933, that official publications are not to be drawn up in a form, which might enable people abroad to infer an infraction of the Versailles Treaty from the publication.

This document does not reveal whether actual treaty violations were to be masked with the directives or whether it was only a matter of avoiding the appearance of treaty violations. The same problem exists for Document 1850–PS, USA Exhibit 742. This is the minutes of a conference between the Staff of the S.A. (Storm Troops) and the Reich Defense Minister, who proposed to the SA in the year 1933 to have the budgetary funds of the Reich designated by the Reich Ministry of the Interior for the military training of the SA.

The document does not throw any light upon the attitude of the Reich Ministry of the Interior towards this proposal and if they had accepted same, this again would have proved only that the Reich Ministry of the Interior furthered the Restoration of the Wehrmacht, a fact which, moreover, is already proved.

Thus, all these documents do not furnish proof that the defendant Frick recognized as a preparation for war of aggression the measures ordered by Hitler as necessary for the defense of the Reich.

During the war, in the year 1941, a few days before the start of the war with the Soviet Union, a conference certainly took place between the defendant Rosenberg and representatives of the ministries concerning measures in case of a possible occupation of territories of the Soviet Union.

This is shown in document 1039–PS, USA Exhibit 146, Rosenberg's report concerning these discussions in which is stated that negotiations took place with "Reich Minister Frick (State Secretary Stuckart)." These parentheses mean that the Reich Ministry of the Interior was represented in these negotiations by State Secretary Stuckart, therefore that Frick did not personally participate in the negotiations. Since the negotiations took place only a few days before the beginning of the war in the East, it is not proven by the document that Frick himself was informed yet about the negotiations before the beginning of the war, which was then, as it is generally known, proclaimed by Hitler as a necessary measure of defense against an imminent attack by the Soviet Union. It has been clarified by numerous proofs in this trial how much Hitler kept his true aggressive intentions secret, and understood generally how to cover up the true aim of all his political measures throughout the years with thousands of convincing reasons with which he justified the individual measures of his policy of aggression.

There was a very small circle of assistants which Hitler informed about his war plans, but this circle was not selected according to the position of the person concerned in the cabinet or according to his position in the party hierarchy, but exclusively from the viewpoint whether the person concerned had to know the aggressive character of Hitler's general policy or even his detailed plans of aggression in respect to his own tasks in the framework of the preparation of the war.

Document 386–PS, USA Exhibit 25, shows with what consequence the principle of secrecy has been kept, even toward the older members of the Party and the administrators of important departments of the Reich Cabinet.

Whoever, as the Reich Minister of the Interior, had to carry out only measures in the framework of the preparation for war which could have been the same as tasks of a purely defensive character, was not informed concerning Hitler's aggressive intention in observance of the latter's principle.

For this reason, the presence of the defendant Frick is not listed in even a single one of these secret conferences in which Hitler informed a circle of selected men about his foreign political plans and his war aims. Hitler has especially accentuated and given reasons for the exclusion of the Reich Cabinet as a governmental body (Gremium) in the document 386–PS just mentioned. In another record concerning a similar conference, Document L–79, USA Exhibit 27, the additional principle is established that no one may be informed about any part of the war plans who does not have to know these plans for his tasks directly. Frick's name is not only missing from the list of those present in the conferences of Hitler concerning his policy of aggression which took place before the war, but the same applies also to the numerous conferences concerning further war aims and Hitler's aggressive intentions which had been held during the war.

The defendant Frick was also not informed or included in the work on them concerning the later attacks, as is shown by Hitler's lectures concerning his plans and the appropriate lists of those present. Frick, a true specialist of domestic administration who was not considered competent for military and foreign political questions, was good enough for the establishment of the civilian administration in case of any possible war—according to Hitler's opinion—the latter's foreign political and military plans were none of the former's business.

However, the prosecution asserts further that the defendant Frick had determined after the conquest of foreign territories and after their occupation the administrative policy in these territories and that he is responsible for it, and the prosecution considers this asserted activity of the defendant according to Article 6a of the Statute as "participation in the execution of wars of aggression." According to the presentations of the prosecution, Frick is said to have exercised an "over-all control" over the occupied territories, especially in his capacity as chief of the "Central Agency" for the occupied territories.

On the basis of the same function, he is also said to be responsible for all war crimes and crimes against humanity which have been committed in the occupied and incorporated territories before and during the war, until his recall as Reich Minister of the Interior on 22 August 1943. It is a question of legal interpretation whether the activity in the administration of occupied territories pursuant to Article 6a of the Statute is to be evaluated as the "execution of wars of aggression," or whether a criminal aspect comes into consideration only under the viewpoint of crimes against the rules of war or against humanity. It appears important to me for the decision of this question that it does not belong to the tasks of an official of a civil administration to examine, after the conclusion of military operations, whether there is a question of a legal or illegal occupation according to the standards of international law. Such an obligation of examination would mean an overburdening for the department of the civil administration as well as for the administrative chief whose activity cannot be designated as illegal for the reason that the territory administered by him had been annexed a short or even a long time ago in violations of the regulations of international law. There is no such obligation of examination in the practice of the civil administration.

The statute also does not force such an interpretation since, under unlimited interpretation, the military operations themselves are to be understood under an execution of wars of aggression, but not the later civil administration of conquered territories.

The punishment of crimes which occurred in the government of the occupied territories would not be made impossible, through such an interpretation. In any case, these crimes are subject to punishment as crimes against humanity or against the rules of war according to the Statute. In addition, it is to be mentioned for which territories in particular the defendant Frick bears a responsibility.

These are, first, the territories which were incorporated according to the national law within the national borders of the German Reich, which are therefore called the "incorporated territories." With the national legal incorporation into the Reich, these territories came under the administration of the appropriate Reich Ministries for the departments of domestic administration, but only for these, thus under the authority of the Reich Ministry of the Interior, so that the defendant Frick bears until August 1943 the national legal responsibility of a minister for the domestic administration of these territories.

In the East, this is mostly a question of the territories West-Prussia-Posen-Danzig, thus the so-called incorporated Eastern territories which belonged until the Versailles treaty to the national entity of the German Reich.

In the East, the Memel district received the same constitutional treatment; in the West the Eupen-Malmedy district and in the Southeast, the Sudetenland. Furthermore, the country of Austria was incorporated into the national union of the German Reich.

For all these territories Frick has a share in the laws and administrative measures which were brought about by the incorporation, and he has the usual responsibility of a Minister of the Interior for the domestic administration of these territories until his dismissal in August 1943.

For the territory of Bohemia and Moravia, however, there was a special government of the protectorate which has been designated as autonomous by the decree concerning the establishment of the protectorate, document 2119–PS, and therefore was not controlled by the Reich Ministry of the Interior.

In a similar way, there was an administration not dependent on the Reich Ministry of the Interior, in the Polish territories which have been collected under the designation "General Government" and have been put under the jurisdiction of a "General Governor." Contrary to the so-called "incorporated Eastern territories," the Reich Ministry of the Interior had no right to issue orders or to take care of administrative matters for the General Government, document 3079–PS, which contains Hitler's decree concerning the administration of the occupied Polish territories.

The same is proved in numerous other documents, among them document USSR 223, the Frank diary where he states that no Reich central offices are authorized to intervene in the government of his territory.

The same applies to all other occupied territories for which a special administration was established under any legal form.

These separate administrations were not dependent on the corresponding administrative ministries in the Reich at any given time, but they were under the jurisdiction of the administrative chief of the corresponding territories, at any given time, and he himself was directly under Hitler's jurisdiction.

This applies to the occupied Soviet Russian territories the entire administration of which was under the jurisdiction of a Reich Minister for the Occupied Eastern Territories.

The same applies to Norway, where a Reich Commissioner was appointed.

In a similar way a Reich Commissioner was appointed for the Netherlands who was also independent from the Reich Ministry of the Interior and was directly under Hitler's jurisdiction.

In Luxembourg, in the Alsace and in Lorraine there were also chiefs of the civil administrations who were not dependent on the Reich Ministry of the Interior, while there was a military administration in Belgium and Northern France which also was not dependent on the Reich Ministry of the Interior.

In the same manner the administrative chiefs of the territories which were occupied in the Southeast of Europe were completely independent from the Reich Ministry of the Interior. For a part of the occupied territories there is now, in the appropriate decree concerning the creation of a separate civil administration, the order that the Reich Minister of the Interior is appointed as the central agency, and from this formulation the prosecution has deducted a responsibility of defendant Frick for the administration of all occupied territories as it is stated in the indictment.

The actual tasks of the central agency result from the order concerning the establishment of a central agency for Norway, Document 3082–PS, or 24 in the Frick document book. The witness Dr. Lammers has given a further explanation of the tasks. At that time, it was the primary task of the central agency to put personnel at the disposal of the chief of the civil administrations in the occupied territories, if requested. Therefore, if a civil official was needed for any district, the administration of the district concerned turned to the central agency in the Reich Ministry of the Interior which then put any official from the Reich at the disposal of the chief of the civil administration; the Reich Ministry of the Interior was especially suited for this, since it had at its disposal numerous officials of the domestic administration in Germany.

But the transfer of one official from the own department to another office which alone gives its orders to the official from this moment on, does not establish responsibility for the further activity of this official in his new department for which the Reich Ministry of the Interior could issue no orders whatsoever. An example: If the Minister of Justice lets the Foreign Minister have one of his officials naturally only the Foreign Minister has the responsibility for the further activity of this official, and not the Minister of Justice who has released the official. This activity of the central agency therefore does not justify the assumption of a responsibility for the administration of the occupied territories by Frick.

The requisitioning of officials for the occupied territories was concentrated in the Reich Ministry of the Interior, that is, as the examination of the witness Lammers has proven, the—I quote from the just mentioned Document 3082–PS—"Unified cooperation of the supreme Reich authorities with each other and with the Reich Commissioner which is to be brought into unison with the needs of Norway."

Accordingly, the hearing of evidence for defendants Rosenberg, Frank and Seyss-Inquart, who functioned as chiefs of civil administrations in the occupied territories, has not, on any single occasion, revealed any cooperation of any kind with defendant Frick either in his capacity of Reich Minister of the Interior or of Director of the Central Office in this Ministry.

Now, the prosecution has referred to several documents in order to prove that defendant Frick exercised extensive control over all occupied territories. Actually, however, those documents as I have just demonstrated reveal no more extensive administrative activity. Document 3304–PS evidences administrative activity for the annexed Eastern territories. This coincides with my statement of the case, that the annexed Eastern territories for their internal administration were subject to the Reich Ministry of the Interior by virtue of their constitutional annexation to the Union of nations of the German Reich. The document, however, bears no reference to the administration of the Eastern occupied territories, i.e., the Government General, or to the occupied Soviet-Russian territories.

The other document submitted, 1039–PS, USA Exhibit 146, evidences the transfer of administrative personnel from the department of the Reich Ministry of the Interior to the Reich Minister for occupied Territories, a typical task of the Central Headquarters, which I have already discussed. The prosecution has submitted further documents which reveal that the Reich Ministry of the Interior had a hand in the bestowal of German citizenship upon so-called "racial Germans."

Neither does this circumstance, however, evidence any administrative authority of defendant Frick for the occupied territories but merely a typical activity of a Minister of the Interior, whose department is competent for the general regulations concerning German citizenship, including cases where persons living outside the Reich territory are involved. Neither, therefore, can this activity of the Minister of the Interior affecting specific persons in the occupied territories, evidence an extensive administrative policy and a general responsibility of defendant Frick for the administration of the occupied territories. In particular, in the occupied territories not annexed to the Reich Territory, Frick had no authority or competence whatsoever in the circle of tasks of the police.

Hitler directly commissioned Himmler to carry out the police work in the occupied territories. Reference can be made in this respect to Document 1997–PS, USA Exhibit 319, Hitler's decree concerning police safeguards of the Eastern territories, for which Himmler was directly commissioned.

The same is revealed by Document 447–PS, USA Exhibit 135, a directive of the OKW, dated 13 March 1941, to the effect that the Reichsfuehrer SS in the occupied Eastern territories is charged with certain duties regarding the execution of which he acts independently and on his own responsibility.

It is not any different with the police tasks in the other occupied territories, which at times were assigned either to the Reichsfuehrer SS Himmler or to the SS and Police chiefs who, I repeat, were exclusively under the discipline of Himmler, but were however, in many cases, actually classified in the range of activity of the civil administration chief involved, the Governor-General in Poland for instance. Compare the excerpt from Frank's Diary entered in the Frick Document Book under No. 25, also USSR 223.

In no case, therefore, were police tasks in the occupied territories under defendant Frick's jurisdiction. Consequently, defendant Frick bears no responsibility for crimes against the laws of war and against humanity in the occupied territories, since he could neither order crimes nor prevent them.

For the territory of the German Reich, I must now examine the claim of the prosecution as to the responsibility of defendant Frick for all the measures of the police, including the Gestapo, as well as for the establishment and administration of concentration camps.

May I first refer to the documents submitted by me in evidence which reveal that the Police, including the political police, was in 1933 still the concern of the individual Laender within the Reich, such as Prussia, Bavaria, etc.

Accordingly, in Prussia, the Secret State Police (Gestapo) and the concentration camps were established and administered by Goering in his capacity as Prussian Minister of the Interior. The tasks of the political police were then transferred by a Prussian law, dated 30 November 1933, to the office of the Prussian prime minister, which was also managed by Goering, so that when the offices of Reich and Prussian Minister of the Interior were merged in Spring 1934, Frick did not assume political police duties in Prussia since these remained much more incumbent upon Goering in his capacity of Prime Minister.

A similar regulation prevailed in the other lands where Himmler was gradually appointed Special Deputy for Political Police. During this period, the Reich Minister of the Interior had only the right of so-called "Reich supervision" over the lands, which Frick made use of by the enactment of general instructions and legal ordinances, and this is the only point where Frick, as Minister of the Reich, could exercise any influence on the affairs of the political Police and of concentration camps.

Frick made use of this possibility, in accordance with his basic attitude as confirmed by witness Gisevius, to prevent and repress arbitrary actions of the political police insofar as this was in his power under the circumstances prevailing then. He endeavored, by the enactment of provisions of law and procedure to restrict the arbitrary practices of the political police of the states. I am referring to Document 779–PS submitted by me as Frick Exhibit 6. This is a decree dated 12 April 1934, containing such restrictive dispositions under the descriptive preamble, which I quote: "In order to counteract abuse occurring in application of protective custody . . ."

This is followed by directives to the state governments, forbidding the application of preventive custody in numerous cases in which it had been improperly applied by the Gestapo.

In this struggle of Frick against arbitrary actions of the Laender political police the latter were of course the more longwinded for they were under the direction of Goering and Himmler, of whom the "bureaucrat" Frick, as Hitler disdainfully called him, could not come within an ace as regards influence with the Party and State. For that reason the Political Police of the Laender in its practice frequently disregarded Frick's legal ordinances. As long as there was reason to hope that through his intervention the wild practice of the Political Police of the Laender could be directed into orderly channels and according to legal prescriptions, Frick did not stand by idly.

I refer to document 775–PS, Frick exhibit 9, a memorandum from Frick to Hitler, which clearly and unequivocally calls things by their correct name, mentioning legal insecurity, unrest and embitterment, and severely criticizing the Political Police of the Laender because of misuse of the right to order custody in individual cases. The same document also proves that the defendant in the struggle of the churches stood clearly on the side of the churches. This is also proved by Neurath Exhibit 1.

In his testimony the witness Gisevius refers to an additional memorandum which he himself drew up for Frick as a further attempt to restrain ånd legally control through severe criticism and suggestions the arbitrary practice of the Political Police of the Laender. None of these attempts was of avail because Frick's political influence was too insignificant and because he could not assert himself against Goering and Himmler, a thing which at the time could not yet become clear to Frick because the practice of Goering and Himmler was essentially in harmony with what Hitler actually wanted himself. Therefore, the documents submitted by the prosecution, taken in conjunction with the evidence offered by the defense show that in the domain of the Political Police and in ordering custody, Frick had a certain competency at a time when Police service still was a task entrusted to the individual states. However, this evidence also shows that during that time Frick's jurisdiction was very limited and it further shows that Frick, acting within the bounds of his competency became active only in order to take steps against the terror and arbitrary actions of the Gestapo through general instructions and through repeated complaints in individual cases so that the conclusion is not justified that Frick in any way positively participated in the Gestapo's measures of terror and compulsion. The legal situation changed at a later time.

With Hitler's decree of 17 June 1936, Document 2073–PS, Document book Frick 35, police tasks for the entire Reich were combined and uniformly transferred to Himmler whose department was formally made a part of the Ministry of the Interior under the title "Reichfuehrer SS and Chief of the German Police in the Ministry of the Interior."

The question now is whether this new regulation conferred on Frick in his capacity as Reich Minister of the Interior any authority of command or whether he was given any power to issue instructions on the Political Police, its offices and functionaries, which could be practically enforced. When Himmler in accordance with his own wish and because of his influence on Hitler was appointed Police Chief for the entire Reich there did not exist in Germany a police or security ministry, properly speaking.

This is the reason why the uniform direction of the Police through Himmler in person was formally attached to the Reich Ministry of the Interior.

But Himmler wanted to be more than a chief of section in the Ministry of the Interior.

Therefore a position entirely novel in German administrative law was created for him and his purposes. The entire sphere of tasks of the Police was separated from the rest of the activities of the Ministry of the Interior and placed under Himmler's special jurisdiction under a newly created title of office which as a government office included the words "Reichfuehrer SS," thereby making it possible for Himmler by reason of a title of office characterizing him as Reichfuehrer SS (in other words a party office at highest level) to carry out State Police tasks in that capacity giving him apparent independence from any instructions issued by a minister of state.

In order to accentuate further the independence of his office within the hierarchy of government agencies Himmler was given the right, from the very beginning to represent Police matters before the Cabinet on his own responsibility, just like a Reich Minister, which is also brought out in the decree covering his appointment, 2073–PS. This decree is a prize sample for overlapping of competencies, something which Hitler favored so very much in his government system. Himmler was part of the Ministry of the Interior and as a functionary of the Ministry of the Interior, was formally bound to abide by instructions of the Minister. However, he also was an independent Police chief with the right to represent before the Cabinet on his own responsibility matters pertaining to the Police, thus eliminating Frick. In addition to that, his orders simultaneously carried the authority of a Reichfuehrer SS and Frick had no authority at all to interfere with them.

The actual effects of this involved arrangement brought out in even stronger measure the towering influence of Himmler on Hitler. Frick repeatedly undertook to intervene in behalf of a safeguard of a well ordered state apparatus, through over-all instructions, intended to restrain the arbitrary acts of the Political Police. As late as 25 January 1938 he tried to curtail admissibility of protective custody through a decree and in a series of cases it forbade its improper application.

I refer to Document 1723–PS, USA Exhibit 206, an extract of which under No. 36 is in the Frick document book. It prohibited protective custody in lieu of, or in addition to, legal penalty, forbidding its application by police authorities of the medium or lower level and making mandatory prior hearing of the accused person. He decreed periodical examination of continuance of reasons for confinement and on principle forbade application of protective custody against foreigners in regard to whom he left to the police only the authority to expel them from the Reich in case of acts endangering the state.

It is easy to object that the Gestapo in practice disregarded all these instructions of Frick and that Himmler and his subordinates had maintained an absolute power by terror and violence. This is correct and has been confirmed in detail by the witness Gisevius.

The matter of importance to me in the defense of Frick is something else—to show that Frick himself disapproved such arbitrary acts and that he tried to do all in his power to oppose such arbitrary acts.

Finally, however, Hitler forbade even this. He informed him through Lammers, as confirmed by him as witness, that he was not to concern himself with police matters, that Himmler was taking better care of it and that the Police was doing well in Himmler's hands.

This is how Himmler finally came to have the Police completely in his hands and he also gave outward expression to this, by later dropping with Hitler's consent the qualification in his official title "in the Ministry for the Interior," simply referring to it as "Reichfuehrer SS and Chief of the German Police" which also becomes evident from the testimony of Lammers.

I believe that, in view of the circumstances, the problem of defendant Frick's responsibility under criminal law for the political police and their arbitrary measures is not established by the fact that the entire police has been formally incorporated in the Reich Ministry of the Interior since the year 1936, as it has been proven that Frick himself did not participate in arbitrary acts, but tried on the contrary to intervene against such arbitrary practice with his might, which, however, was by no means a match for the personality and the influence of Himmler with Hitler.

In order to obtain a just judgment, I request consideration of the actual situation as to commands and power and not the purely external circumstance of a formal incorporation of the tasks involved in the Reich Ministry of the Interior.

The Prosecution during their presentation on 3 July 1946 brought out Document D–181, which has become GB 528. They stated in that connection that this document proved that the political police not only was a part of the Ministry of the Interior, but that Frick had in fact been responsible for the measures of the political police. Actually the document shows only that Frick had been included as Minister of the Interior in the proceedings employed during the sterilization of the so-called hereditary-diseased. The document has nothing to do with any measures of the police, and certainly nothing to do with any measures of the political police. And there is no information in it regarding Himmler's position in the Ministry of the Interior.

In this connection, I must briefly deal with the reference of the prosecution to the fact that Hitler's decree concerning the appointment of Himmler as Chief of the German Police, document 2073–PS, had also been signed by Frick himself.

I believe that the relationship between Frick and Himmler, as well as the differing relation of both to Hitler is sufficiently clear to justify the conclusion, that the appointment of Himmler expressed solely an agreement between Hitler and Himmler, which Frick would have vetoed in vain.

We are confronted with the same problem which applies to so many defendants, namely, the problem of being one of the formal co-signers of an order which was issued by Hitler and which was also formally signed by the chief of a department, although the department chief had no means of exerting influence on the order and could not have prevented it either, since the order would have gone fully into effect as a Fuehrer decree.

I now have to deal more fully with several documents, which have been appraised by the prosecution as bearing on actual activity of defendant Frick within the sphere of tasks of the political police.

I have already dealt with Document 3304–PS, to which the prosecution has referred in this connection. It concerns an ordinance about the assignment of a higher Police Chief to the Reichsstatthalter (Reich-Governor) in the Eastern territories which are incorporated in the State Union of the German Reich, and hence deals with the administrative structure of the Reichstatthalter's office in a part of the Reich.

The mentioned decree therefore falls within the frame-work of the general competence, of the Minister of the Interior and insofar does not prove a special police activity.

Moreover, this decree has nothing to do with any arbitrary acts of the Gestapo.

Along the same line is the decree of 20 September 1936, Document 2245–PS, concerning the appointment of police-consultants with the Prussian provincial administrations, which were also subordinate to the Reich Ministry of the Interior as offices of the general internal Reich administration.

The assignment of a police consultant to the office of the general administration in the province is a measure of the internal Reich administration.

This measure, too, had no connection with arbitrary acts of the Gestapo, and particularly it also does not prove the issuance of any instructions by the defendant to the Gestapo.

The same applies to the documents which have been appraised by the prosecution as bearing on participation of the defendant in the establishment and administration of concentration camps or as an approval of terror methods through the Gestapo.

In the presentation of 22 November 1945, the prosecution referred to document 2533–PS as proof of approval of these arrangements by the defendant Frick. I do not have to go any farther into the contents of the document. It concerns an article of defendant Frank in the magazine of the academy of German Law, of which Frick has erroneously been called the author by the prosecution.

Another document does not have enough value as evidence to be utilized for a legal judgment.

I refer to Document 2513–PS, Exhibit 235, which contains an excerpt of a speech, which Frick allegedly made in the year 1927, but the excerpt of this speech is taken from a provincial Social Democrat newspaper, a small paper opposed to Frick, the reporter of which thus had no authentic copy of the speech at his disposal, and we all know what mistakes and misunderstandings are also contained in such short reports, the composition of which cannot be checked by the speaker himself.

Thus this document, according to which Frick is said to have stated that history is written not only with the ballot, but with blood and iron, is not a reliable source.

The prosecution further submitted document 1643–PS, USA Exhibit 713. This document refers to the conferences concerning the expropriation of land in order to extend the grounds of the Auschwitz concentration camp.

The general domestic administration is always competent for expropriation and for this reason, an official from the Ministry of the Interior was called into the negotiations, who stated however —page 2 of the English translation of the document—that he was not authorized to dispose of real property. Thus, one cannot construe from this document any political-police activity of the defendant or an approval of the practice of concentration camps.

Finally, the prosecution in this connection pointed out that defendant Frick personally visited the Oranienburg and Dachau concentration camps. The defendant does not deny the visit in

Oranienburg in the year 1938 about which witness Hoess testified. At that time, as witness Hoess himself testifies, the external framework of the camps was still that of military training areas. In any case, an official visitor to the camp at that time could not notice any murders, mistreatments or similar crimes, so that the visit is not a decisive argument for knowledge of crimes in the concentration camps.

On the other hand, Frick never visited the Dachau concentration camp, contrary to the testimony of witness Blaha. In this, I refer to the testimony of Gillhuber, who as the constant companion of Frick would have had to know about such a visit if it had taken place. I take the liberty of pointing out also that the two other constant companions of Frick have also been mentioned by me as witnesses, but by the consent of the prosecution were considered as unnecessary by the Tribunal for the reason that one of the companions would be sufficient as witness.

At the conclusion of this chapter, I must still concern myself with an assertion of the prosecution which designated Frick at one time as the chief of the Reich Security Main Office.

I take the liberty of pointing out the testimony of the witness Ohlendorf who stated to the court that the Reich Security Main Office (RSHA) was a creation of Himmler, who combined in this office his state police tasks and his functions as Reichsfuehrer SS, with which Frick had no relationship of any kind and over which he had even less authority to command. The chief of this office was thus only Himmler himself.

I must go further into the charges which are being made against the defendant Frick in respect to the persecution of members of the Jewish race. Frick shared in the legal measures, particularly the Nurnberg Laws, and in administrative measures, which he regarded as an expression of National Socialist race policy. On the other hand there is no proof that Frick himself had shared in or had known of the measures of physical extermination which, on Hitler's direct orders, were carried out by Himmler and his organizations, and were being kept secret from those who themselves had no part in these frightful events. Furthermore, in his capacity as Minister of the Interior, the defendant is also accused of having participated in the killing of the sick and insane. Hitler's basic order is contained in Document 630–PS, USA Exhibit 342. This document shows that Hitler did not give a corresponding order to some governmental office but, completely outside of the governmental order system of the Ministries, to two single persons, namely Bouhler and Dr. Brandt. Contrary to all rules, Hitler did not sign this order himself in an official capacity as Fuehrer and Reichchancellor, but used personal stationery with the heading "Adolf Hitler."

This shows what the witness Lammers has confirmed, that Hitler did not give an order for these measures to the Ministry of the Interior or some other governmental office, but to two of his Party members, as also the Party symbol is the only mark on this stationery. On the other hand, the documents submitted by the Prosecution prove that complaints were made which also reached the Ministry of the Interior but they do not prove that, in contradiction to Document 630–PS, Frick had a share in the measures for the killings or that he could have stopped them.

After his departure from the Ministry of the Interior on 20 August 1943, Frick was appointed Reichprotector of Bohemia and Moravia. Here he was given an order which from the start was entirely unequivocal in its competence. I refer to Document 3443–PS also as USSR 60 and 29 in the Frick document book, further 1366–PS, submitted by me as Frick Exhibit 5a, furthermore the testimony of the witness Lammers. The office of the Reichprotector was originally the unified representative of the Reichpower in the Protectorate.

In actual practice however, the authoritative power passed more and more to Frank, the Secretary of State for the Reichprotectorate at that time. With the appointment of Frick in August 1943, through a Fuehrer decree which was not made public, the executive authority was now formally transferred to Frank, who from that time on received the official title "The German Minister of State in Bohemia and Moravia." The Reichprotector, retained substantially the privilege of representation and right of clemency, the improper use of which by Frick has neither been maintained nor proved by the prosecution. On the other hand, Frank, as "German Minister of State," according to the above mentioned Fuehrer decree, exercised his executive authority directly under Hitler, by whom he had been directly appointed, and from whom he received his directions without Frick's intervention, Frick being in no way authorized to exercise any influence thereon. Considering this state of affairs, a charge against the defendant Frick cannot be derived from Document 3589–PS, USA Exhibit 720.

I now come to the Prosecution's accusation that Frick, by his membership of certain organizations, is responsible for certain criminal actions.

The SS was one of these organizations emphasized by the Prosecution. Frick has never been a member of it.

Similarly, he was never a General in the SS, as stated by the

Prosecution. I might assume this to be merely a mistake on the part of the Prosecution. In any case the Prosecution did not submit proof thereof.

Frick was likewise never a member of the SA, as shown, probably by mistake, in the chart which indicated Frick's membership of various organizations. There is no proof of this.

The Prosecution has charged Frick with being the supreme chief of the Gestapo, and therefore designated him as its member, on the strength of the argument that since the appointment of Himmler in 1936 as Chief of the German Police, the Gestapo has been formally incorporated into the Reich Ministry of the Interior.

But the Gestapo had its own Chief in the person of Himmler, who alone issued orders, and his formal subordination to the Minister of the Interior, does not necessarily make him, the Minister of the Interior, a member of the organization which was exclusively under Himmler's orders. My colleague charged with the defense of the Gestapo will also have to deal with the character of this organization. As to the defendant Frick, I have only to state that he held the formal position of a Reichsleiter in his character of Chairman of the Reichstag fraction of the NSDAP.

The Reichstag having lost its political importance since 1933, which fact needs no further explanation, Frick's position had also practically lost its importance and could no longer be compared with the position of a Reichsleiter, who administered important political branches.

And finally Frick as Reich Minister was a member of the Reich Cabinet. Also with regard to the character and the authority of this organization I refer primarily to the statements which are yet to follow of my colleague, who has been named defense counsel of this organization.

I am referring here only to the testimony of Lammers and Gisevius, and furthermore to the excerpt from the book of this witness, which I have submitted as Exhibit 13 as evidence for the position and authority which the Reich Cabinet maintained toward the dictatorial practices of Hitler.

According to all this the defendant Frick appears as a personality, which certainly exerted a decisive influence on interior policy after this goal had been achieved.

All his measures, however, had inner-political aims; they were not intended to have anything to do with the foreign-political goal of a war of aggression and especially not with crimes against humanity, committed to further crimes against the peace or against the rules of warfare, and only in these cases would this court have jurisdiction according to Article 6 of the Statute, as has also been stated by the Prosecution.

When Frick realized that the policy had turned into a direction of which he could no longer approve, he tried to exert all his influence in order to introduce a change. However, he then had to see more and more that he could not find an audience in Hitler for his representations and complaints, and to the contrary, he had to realize that these complaints destroyed Hitler's confidence in him, as the latter preferred to have himself advised by Himmler and persons of similar attitudes, so that Frick finally was not received by Hitler any more since the year 1937. If he wanted to present any complaints Frick then gave up such hopeless attempts to introduce a change in the situation, which would not have been changed by his resignation either, which according to the results of the evidence he had repeatedly offered in vain.

In this way his tragedy lies in his entanglement in a system in the first steps of which he had participated enthusiastically and the development of which he had imagined to be different.

In any case it appears important to me in judging his personality and his actions, that this presentation of evidence which has gone on for months has not given any proof of the personal participation of the defendant in any crimes, either.

It is not without reason that John Gunther in the book "Inside Europe," which I have presented to the Tribunal as evidence, describes especially the defendant Frick as "the only honest Nazi." Gunther at the same place goes on to call him a "bureaucrat all the way through." Hitler himself always called him repeatedly the "paragraph scrounger," he whom Frick (just about typically of him) had not met in any public assembly but in his office with the police in Munich in the year 1923. This man felt enthusiasm for the suggestive power of Hitler, for himself so distant, who with his big word appealed to his senses, his honor, and his patriotism.

It was Hitler who made him proud to be able to participate in the reconstruction of a German nation, which through strong armed forces was to be in a position to play a peaceful but yet active part in world politics.

However, it was also Hitler who understood to throw a scare into the citizen Frick about the supposedly threatening Bolshevist danger and whatever more there existed of false phrases, twisted statements, and propaganda arts, and which also fooled men of greater mental height, who let themselves be driven along by the suggestive power of a Hitler, and who did not realize in time that they had subordinated themselves to the suggestive will of a criminal who was prepared to overthrow the pillars of civilization for his ideas and who finally would leave Germany behind in a monstrous spiritual and material field of rubble, to the overcoming of which this trial may also contribute through a sentence in accordance with law and justice.

2. FINAL PLEA by Wilhelm Frick

I have a clear conscience with reference to the accusations. My entire life was spent in the service of my people and my fatherland. To them I have sacrificed my entire strength in faithful fulfillment of my duty.

I am convinced that no patriotic Americans or patriotic members of another country would act differently were his country in the same position, because any other action would have been a breach of my oath of allegiance, and high treason.

Regarding the fulfillment of my legal and moral duties, I believe that I deserve no more penalty than the tens of thousands of faithful German civil servants and employees of official state agencies who here today, as years and years ago, are detained in camps merely because they fulfilled their duties. To them I owe memory and faith which I, as a former, long-standing Minister of the Reich, consider it a particular honor to state.

XI. JULIUS STREICHER

1. FINAL ARGUMENT by Dr. Hans Marx, Defense Counsel

When in May of the past year the final action of the greatest and most horrible war of all times came to an end, the German people was slow to rise again from the stupor in which it had for the most part spent the last months of the war. Like all the peoples of Europe for years it had suffered unspeakably, the last months in particular with their hail of bombs had brought so much misery to both country and people that it almost surpassed all human capacity.

This terror was increased by the knowledge that the war was lost and by the fear of the uncertain fate which the occupation period would bring. And when finally the period of first anxiety had passed, when the German people was slowly beginning to breathe again, paralyzing horror spread once more.

Through the press and radio, through newspapers and motion pictures knowledge was spread of the atrocities which had taken place in the East, in the steppes, and in the concentration camps. Germany learned that people, men of its own blood, millions and millions of innocent Jewish people had been slaughtered and destroyed. Most people felt instinctively that these deeds would necessarily be the greatest accusation among all the charges the world had to make against Germany.

The question of whether the German people in its totality had known and approved of these actions was and is the great question for its fate. It is the touchstone by which the decision must be made as to whether Germany will ever be able to return again as a nation with equal rights into the common cultural and spiritual cycle of the world.

As in every case of guilt, there immediately arose in this case as well the question as to who was responsible and a search for that person. Who had ordered these atrocities, who had carried them out, and how could such inconceivable things ever happen at all, or such actions be committed as have no equal even in the history of the earliest times.

During all this asking and guessing the news arrived that the former Gauleiter of Franconia and publisher of the "Stuermer," that is the present defendant Julius Streicher, had fallen into the hands of the American troops. From the echo this news aroused in the press which was exclusively directed and published by the occupying power and just as in the radio news, it could be gathered that the world imagined that in the person of Julius Streicher it had not only taken prisoner one of the numerous anti-Semitic propaganda agents of the third Reich, but in short enemy No. 1 of the Jews.

In the rest of the world it was evidently the prevailing opinion that in Julius Streicher they had seized not only the most active propaganda agent for the persecution and extermination of Jews, but that he had also participated to the highest degree in carrying out the acts of extermination.

He was said to have been, as one heard, not only the greatest hater of the Jews and the greatest preacher of extermination of the Jews, but also the person to whose direct influence one must trace back the extermination of European Jewry.

It is only from this viewpoint that it can be explained why the defendant Streicher sits here in the defendant's dock together with the other defendants among the chief responsible persons of the National-Socialists system. For in itself, neither according to his personality nor measured by his offices and positions does he belong to the circle of leaders of the NSDAP nor to the Party's decisive personalities.

This opinion which probably was shared in the beginning by the prosecution was abandoned by them, however, at an early stage for the written indictment no longer charged the defendant Streicher with any personal and direct part in the abominable mass murders, it rather stated on the other hand that there was less evidence to offer for him than for any of the other defendants in favor of a direct and personal guilt. Only his propaganda, his work both written and verbal, were made the subject of an accusation.

As far as particulars are concerned, the counts of the indictment against the defendant Streicher were summed up as follows:

I. Support of seizure of power and consolidation of the power of the NSDAP after the latter's entry into the government.

II. Preparation of aggressive wars by propaganda aimed at the persecution of the Jews.

II. Intellectual and spiritual preparation and education to encourage hatred against the Jews.

  a. In the German people.
  b. In the German youth.
  c. In the active annihilators of Jewry.

Without Julius Streicher no Auschwitz, no Mauthausen, no Maidanek, no Lublin—in such a manner the indictment may be summed up briefly.

I

As regards Count I of the indictment, the defendant does not deny that as regards the Party's later seizure of power he supported and promoted it with all his might from the very beginning. His support went to the extent of a whole movement which he had built up personally in Franconia, and which he put at the disposal of Adolf Hitler's party, the latter being extremely small, after the first world war and limited to southern Bavaria only. Furthermore, after Hitler's release from the fortress of Landsberg he immediately joined him again and subsequently championed his ideas and goals with the greatest determination.

Until 1933 the defendant's activity was limited to propaganda for the NSDAP and its goals, particularly in the field of the Jewish question.

There is nothing criminal to be seen in this attitude of the defendant as such. The participation in a party within a state which allows such an opposition party can be regarded as criminal only if, first of all, the goals of such a party are objectively criminal, and if subjectively a member of such a movement knows, approves of, and thereby supports these criminal goals.

The foundation of the entire charges against all the defendants lies in this very fact that the NSDAP is accused of having had criminal goals from the very beginning.

According to the assertion of the prosecution the members of this party started out with the plan of subjugating the world, of annihilating foreign races, and of setting the German master-race above the whole world. They are accused of having harbored the will to carry out these aims and plans from the very outset by means of aggressive wars, murder, and violence.

If, therefore, Streicher's mere participation in the NSDAP and his support of it are to be ascribed to him as a crime, it must be proved that the party had such plans and that the defendant knew and approved of them.

The gentlemen who took the floor before me have already demonstrated sufficiently that such a conspiracy with such aims did not exist. Therefore I can save myself the trouble of making further statements on this subject and I can refer to what has already been set forth by the other defense counsels. I have only to deal with the point that the defendant Streicher did not in any case participate in such a conspiracy, if the latter should be considered by the High Tribunal to have existed.

The official party program strove to attain power in a legitimate way. The aims advocated therein cannot be considered as criminal. Thus, if such aims did actually exist, they could only—given the nature of a conspiracy—be known in a restricted circle.

The party program was not kept secret but was announced at a public meeting in Munich, so that not only the whole public of Germany but also that of the entire world could be informed about the aims of the party.

Therefore, there is a complete absence of that momentum given by the secret agreement in a common aim, which is usually the characteristic sign of a conspiracy.

The hearing of evidence, too, has shown nothing to the effect that at that time already there existed a plan for a war of revenge or aggression, connected with the preceding or simultaneous extermination of the Jews. If nevertheless a conspiracy should have existed, the latter would have confined itself to the narrow circle which revolved exclusively around Hitler. But the defendant Streicher did not belong to this circle. None of the offices he occupied provides the least foothold for it. As an old party member he was just one among many thousands. As honorary Gauleiter, as honorary SA-Obergruppenfuehrer, he was also only an equal among equals. Thus one cannot find in any of the offices he held any link or entanglement with the innermost circle of the party. It is also impossible to discern after the end of 1938 any personal relations with the leading men of the movement, be it with Hitler himself, be it with the defendant Goering, be it Goebbels, Himmler, or Bormann.

The prosecution did not offer any evidence on this point, nor did the proceedings produce any proof to that effect. Of all the material presented during all these months of the Trial, nothing can be taken even as a shadow of a proof that the defendant Streicher was so closely connected with the highest authority of the party that he could have or even must have known its ultimate aims.

The final aims of the NSDAP in the Jewish question, the effects of which were manifest in the concentration camps, had not been formulated and fixed the way they appeared in the end, neither before the seizure of power nor several years after. The party program itself provided for the Jews to be placed under a law for aliens, thus the laws issued in the third Reich followed this line. Only later on, it can be said here, the program became more severe and finally came head over heels under the influence of the war. But any proof of the fact that the defendant Streicher recognized other aims than those of the official party program has not been offered.

Accordingly, it has not been proved that the defendant being aware of the criminal aims of the party supported the seizure of power of the NSDAP, and only on such a basis could a penal charge be brought against him.

The fact that the defendant, as Gauleiter, further endeavored to increase and maintain the power of the NSDAP after the seizure of power is also not disputed by him. But here, too, only if the defendant knew at that time the objectionable aims of the party can his conduct be considered punishable.

From the purely factual standpoint it must be said here that the defendant Streicher, contrary to almost all other defendants, did not remain in his position until the end, not even until the war. Officially he was dismissed in 1940 from his position of Gauleiter, but actually and practically he had been without any influence and power for more than a year. But while he could still work within the modest framework which was at his disposal in his capacity of Gauleiter, no criminal plans of the NSDAP were recognizable. In any case not for somebody, who like the defendant Streicher was outside the close circle surrounding Adolf Hitler.

II

Count II of the indictment brought against the defendant Streicher, namely the persecution of Jews as a means of preparation for a war of aggression, can be included here. Up to 1937 the existence of a plan for a war of aggression was absolutely not noticeable. In any case, if Hitler should have entertained an intention to that effect, he did not let it be known to the outside. If, however, anybody should have been taken into his confidence at that time it would have been the leading men in politics and the Wehrmacht, who belonged to the closest circle around him. However, by no means did the defendant Streicher belong to those. Especially significant here is that at the outbreak of the war Streicher was not even appointed Wehrkreiskommissar of the Gau (Commissioner of military administrative area HQ). The individual conferences, from which the prosecution derives the evidence for the planning of the war which occurred later on, did not see the defendant Streicher as a participant. His name does not appear anywhere, neither in a written decree, nor in a protocol. Consequently, no proof has been offered that Streicher knew of any alleged plans for waging war.

But this eliminates the reproach that he preached hatred against the Jews in order to facilitate thereby the conduct of the war planned for some time after. In this connection the following is to be said: One of the main points in the program of the NSDAP has been the call "away from Versailles." The defendant adopted this program-point which, however, does not mean that he expected to do away with the Treaty by means of a war.

The former German democratic governments in the course of their negotiations with former opponents from the world war also stressed the fact at all times that the Versailles Treaty is no proper basis for a permanent world peace and particularly for an economic adjustment. Not only in Germany but everywhere in the entire world the attitude of clear thinking economic circles toward the Versailles Treaty was to reject it. We may point especially to the United States of America as an example.

All German political parties in Germany, irrespective of their other aims, concurred in the opinion that the Treaty of Versailles should be revised. Neither was there any doubt that such revision was possible only on the basis of a new agreement. To even consider any other possibility of a solution would seem like Utopia, since the German Reich lacked all military power. The NSDAP strove, at any rate so far as the outer signs indicated, to find a solution to the problem in just this way. The supporting of such aim, however, cannot be looked upon as a violation of treaty obligations, and made the object of a charge against the defendant. No proof has been offered that he expected military complications and that he desired them.

I am about to take up the matter of the defendant's attitude in the Jewish question. He is accused of having incited and instigated through decades the persecution of the Jews and of being responsible for the final extermination of Europe's Jewry.

It is clear that this accusation constitutes the focal point of the indictment against Julius Streicher and perhaps of the total indictment, for in this connection the position of the German people to this question must be tried and judged as well. The Prosecution takes the point of view that there is just as little doubt as to the responsibility of the defendant, as there is doubt about the guilty involvement of the German people. As evidence the Prosecution brought up—

a. The speeches by Streicher before and after the seizure of power, namely, one speech in April 1925 in which he spoke about the extermination of the Jews. In the Prosecutor's opinion the altogether first evidence regarding the final solution of the Jewish question planned by the Party, namely the extermination of all Jews, is to be seen in these speeches.

b. Active commitment of the personality and authority of the defendant, namely on the boycott-day, on 1 April 1933.

c. Numerous articles published in the weekly "Der Stuermer," among them especially such dealing with the ritual murder and with quotations from the Talmud. He knowingly and intentionally described in them the Jews as a criminal and inferior race and created and wanted to create hatred and the will to annihilate this people.

The defendant's reply to these points is as follows:

He states that he worked in the capacity of a private writer only. His aim was to enlighten the German people on the Jewish question as he saw it. His description of the Jews merely had the purpose to show that they are different and of a foreign race and to make it clear that they are living according to laws alien to the German conception. It was by no means his intention to incite and instigate his listeners and readers. Besides, he only propagated the thought that the Jews should be extricated from the German national and economic life and eliminated from the close association with the body of German people.

He had, further, an international solution of the Jewish question in mind, he thought nothing of a German or even European part-solution and rejected it. So it happened that he suggested in an editorial of the Stuermer of 1941 that the French island of Madagascar should be taken into consideration as a Jewish settlement. Accordingly, he did not see the final solution of the

Jewish question in the physical extermination but in the resettlement of the Jews.

It cannot be the aim of the Defense to go into further details of the defendant's actions as journalist and speaker, namely regarding his Stuermer and his answer to the accusations lodged against him. His ideology and attitude shall likewise remain unexplained, unexcused, or defended, also his way of writing and speaking. The examination and decision in this respect is the Tribunal's duty exclusively. That much may be said, that there is a gap between the defendant's actions and the expressions frequently employed by him which cannot be bridged. It can be stated that the defendant when assigned to take charge of some anti-Semitic enterprise never let coercive measures prevail against the Jewish population, and might necessarily be expected of him, if the accusations made by the Prosecution were true.

I see my duty as defense counsel in examining and clarifying the question of whether the defendant Streicher with his speeches, actions, and with his publications not only strove for but actually attained the success claimed by the Prosecution.

In the following the question should be examined whether Streicher actually educated the German people for anti-Semitism to a degree which made it possible for the leadership of the German people to commit such criminal acts as actually occurred.

Furthermore, it should be examined whether the defendant filled the German youth with hatred against the Jews to such an extent as charged by the Prosecution.

Finally, it should be decided whether Streicher was actually the man who prepared spiritually and morally the executive organs of the persecution of the Jews to commit their acts.

At the beginning of this presentation it seems important to point out that a great many "Stuermer" articles from which the Prosecution endeavors to deduce an invitation to exterminate and annihilate the Jews were not written by Streicher himself but by his collaborators, especially by the deputy Gauleiter Karl Holz, well known for his extremely radical tendencies.

Even though the defendant Streicher carries the formal responsibility for these articles which responsibility he expressly assumed before the Tribunal, this point of view still appears very essential for the extent of his criminal responsibility.

Further it may be said in this connection that according to the unrefuted statement of the defendant, the sharpest articles were written in reply to articles and writings in the foreign press, which contained very radical suggestions of destruction against the German nation, also no doubt due to the existing war psychosis.

The defendant Streicher—it cannot be denied and is not to be defended—continually wrote articles in the "Stuermer" and also held public speeches, which were strongly anti-Jewish and which at least aimed at the elimination of Jewish influence in Germany.

During the first 5 years Streicher found a comparatively favorable soil for his anti-Jewish tendencies. The first world war finished with Germany's defeat, but wide circles did not want to admit the fact of a military victory of Germany's opponents of that time, they imputed this defeat to a decomposition of the national will of defense and resistance from within and designated Jewry as being the main culprit for this undermining from within. In doing so, one intentionally overlooked the errors which had been committed by the Government of that time before and during the war with respect to domestic and foreign policy as well as the errors of strategy.

A scapegoat was sought on which to blame the loss of the war and one believed to have found it in the Jews. Jealousy, envy, and also forgetfulness of one's own insufficiencies accomplished the rest in order to influence unfavorably the feelings towards the Jewish population. In addition to that, the inflation occurred and in the following years the economic depression with its steadily increasing misery which, as experience shows, makes any nation ripe for any form of radicalism. On this ground and from this medium arose the "Stuermer." For these reasons it met with a certain amount of interest and attracted a considerable number of readers. But even during the last years before the accession to power it did not have a great influence. Its distribution did not go beyond Nurnberg and its close vicinity. By means of attacks against personalities locally known in Nurnberg and in the others places it managed to arouse in these localities from time to time a certain amount of interest and to extend thereby its circle of readers. Certain groups of the population were interested in the propagation of such scandal stories and for these reasons subscribed to the "Stuermer."

But a criminal way of action can be seen in this—and this is probably the conception of the prosecution also—only if this sort of literary and oratory activity led to criminal results. But was the German nation really filled with the hatred of the Jews in the sense and to the extent asserted by the prosecution through the "Stuermer" and through Streicher's speeches?

The prosecution produced the evidence on this point in a very brief manner. It draws conclusions but it has not produced actual evidence. It alleges indeed the achievement of a result, but it cannot produce factual evidence for its assumption.

The prosecutor maintained that without Streicher's incitements which lasted for years, the German people would not have approved the persecution of the Jews and that Himmler would not have found among the German people any tool for the execution of the measures taken for the extermination of the Jews. Should however the defendant Streicher be made legally responsible for this, then not only must it be proved that the incitement as such was actually carried through and that a result was achieved in this direction but—and this is the decisive point—a conclusive proof must be produced that the facts exposed can be traced back to the incitement. It is not the question of the result obtained which has first to be proved with such accuracy, but the causative connection between the incitement and result.

But how is the influence of the "Stuermer" upon the German people to be estimated, and what picture do we get when we look at the Jewish problem during the years between 1920 and 1944?

It is easy to recognize here three stages of development.

The first period comprises the interval in the defendant's activity between 1922 and 1933, the second that between 1933 and 1 September 1933 or February 1940, the third that between 1940 and the collapse.

As regards the first period, it would show a considerable lack of appreciation of the tendencies which had already existed in Germany for a long time, and thereby a completely groundless exaggeration of Streicher's influence if no mention were made of the fact that long before Streicher there was already a certain anti-Semitism in Germany. For instance a certain Theodor Fritsch touched on the Jewish question in his publication "Der Hammer" long before Streicher's time and referred especially to the alleged menace offered by the immigration of Jewish elements from the East which might overflow the country and acquire too much control in it.

Immediately after the end of the first world war the so-called "German-Ethnical Protective and Defensive League (Deutsch-Voelkischer Schutz und Trutzbund)" appeared which, in contrast to the "Stuermer" and the movement brought into existence by Streicher, was spread over the whole of Germany and had set up as its aim the repression of the Jewish influence. Long before Streicher, anti-Semitic groups existed in the South as well as in the North. In relation to these large-scale efforts, the "Stuermer" could only have a regional importance. For this reason alone, it is easy to explain why its influence was never at any time or in any place of great importance. It is a decisive fact however that the German nation in its totality could not be influenced by all these groups either in its business relations or in its attitude to Jewry and that even during the last years before the NSDAP came to power no violent actions against the Jews occurred anywhere—of the people's own volition.

However, when toward the end of the second decade after the first world war a considerable gain of the NSDAP became noticeable, it was not due to anti-Semitic reasons, but to the fact that the prevailing confusion in the various parties had been unable to show a way out of the ever increasing economic misery. The call for a strong man became ever more urgent. The conviction became more and more compelling among the broad masses that only a personality who would not be dependent on the change of majorities would be able to master the situation.

The NSDAP understood how to exploit this general trend for its own ends and to win over the nation who had sunk in despair by disseminating promises in all directions. But never did the masses think, when electing the NSDAP at that time, that their program would develop in such a way as we have witnessed.

With the accession to power by the NSDAP in 1933, the second epoch was introduced. The power of the state was in the hands of the party and nobody could have prevented the use of violence against the Jewish circles of the population.

Thus it should have been just the right moment for the defendant Streicher to effect his baiting as the prosecution has maintained. If at that time wide circles of the people or at least the veteran members of the NSDAP had been brought up as radical Jew haters as stated by the prosecution, acts of violence against the Jewish population should necessarily have taken place on a greater scale, due to the accumulation of that mood of hatred. Pogroms of the greatest scope would have been the natural result of a truly anti-Semitic attitude of the people. But nothing like that happened. Apart from some minor incidents, evidently caused by local or personal conditions, no attacks against Jews or their property took place anywhere.

It is quite clear that an atmosphere of hatred against the Jewish people did not prevail anywhere at least up to 1933 and the charge brought by the prosecution against the defendant that he successfully educated the German people to hate the Jews ever since the very start of his fight can thus be dropped. The year of the seizure of power by the NSDAP also put the "Stuermer" to a decisive test. Had the "Stuermer" been considered by the broad masses of the German nation as the authoritative champion against the Jews and therefore indispensable to that fight, an extraordinary increase in the demand for the publication would have followed.

No such interest was displayed, however, in any way. On the contrary, even in party circles demands were heard to discontinue the "Stuermer" entirely or at least to change its illustrations, style, and tone. It became more and more clear that the interest in Streicher's Jewish policy was steadily declining, an interest which was limited anyway.

It must be added that with the seizure of power by the Party the total press apparatus got under the control of the party, which immediately undertook to coordinate the press, i.e., to direct it from a central agency in the spirit of a National-Socialist policy and ideology. This was done through the Minister of Propaganda and chief of the Reich Press via the official "National Socialist party correspondence." Particularly Dr. Goebbels, the Minister of Propaganda, designated by different witnesses such as Goering, Schirach, Neurath, and others as the most inveterate representative of the anti-Semitic trend in the government was credited with giving each week to the entire press several anti-Jewish editorials, which were printed by more than 3,000 newspapers and magazines. If we realize that Dr. Goebbels in addition was making broadcasts in an anti-Semitic spirit, we do not need any further explanations for the fact that the interest in a onesided anti-Semitic journal should disappear and that did in fact happen.

It is particularly significant that at that time it has been repeatedly suggested to forbid "The Stuermer" altogether. This is brought out clearly in the testimony of Fritzsche as a witness on 27 June 1946, who stated in addition that neither Streicher nor the "Stuermer" had any influence in the Ministry of Propaganda and that the paper was considered to a certain extent as nonexistent.

It might have been for the same reason that the "Stuermer" was not even declared as a press organ of the NSDAP, and was not even entitled to bear the party's insignia (Hoheitszeichen). It was considered, from the viewpoint of party and state administration, contrary to all papers which were held to be of any significance, as a private paper belonging to a mere private writer.

The firm which published the "Stuermer" and which belonged at that time to a certain Haerdel was not inclined, however, to accept so simply the shrinking circle of its readers, for it was now aided by the fact that Streicher had become the highest political leader in Franconia, and it knew how to make the most of this circumstance. Already at that time pressure was exerted on many sections of the population to the effect that they should prove their loyal political attitude and trustworthiness by taking out a subscription to the "Stuermer." The witness Fritzsche had also pointed out this circumstance and has stated that many Germans only decided to subscribe to the Stuermer because they thought it would be a means of paving the way for their intended membership in the Party. In order not to give a false impression of the number of editions of the "Stuermer" during the years 1923 to 1933, the following analysis will show the different stages of its development:

In the years 1923 to 1933 the "Stuermer" was able to increase its circulation from some 3,000 to some 10,000 copies, and this went up again to some 20,000 shortly before the seizure of power. On the average, however, between 1923 and 1931 the publication could only claim some 6,000 copies. With the transfer of power by the end of 1934 it had reached an average of some 28,000 copies. It was only in 1935 that the publishing firm of the "Stuermer" became the property of the defendant Streicher, who according to his statement bought it from the widow of the previous owner for 40,000 RM. From 1935 on the management of the firm was taken over by a professional, who succeeded by clever technical propaganda in increasing the number of copies to well over 200,000 and this figure was later surpassed in ever increasing proportion until it reached more than the double. The relatively low number of copies of the "Stuermer" up to the beginning of 1935 shows that despite the party's rise to power, popular interest in the "Stuermer" was present only in a minor degree. The extraordinary increase in the circulation which began in 1935 is to be traced back to the adroit propaganda methods already mentioned, which were employed by the new director Fink. The use of the Labor Front declared in the proclamation of Dr. Ley in No. 36 of the "Stuermer" of 1935 and the acquisition thereby of many thousands of forced subscribers must be ascribed to the personal relations of the manager with Dr. Ley.

In that connection I, furthermore, refer to a quotation from the Pariser Tageblatt of 29 March 1935 which is printed in the "Stuermer" copy of May 1935. Here too, it is stated that the increase of the "Stuermer" circulation cannot be ascribed to the desire of the German people for such kind of spiritual food. It is neither presumable nor probable in any way that the subscription to the "Stuermer," forced on the members of the Labor Front in such a manner, could have actually turned the subscribers into readers of the "Stuermer" and followers of its way of thinking. On the contrary, it is well known that bundles of "Stuermer" copies in their original wrappings were stored in cellars and attics and that they were brought to light again only when the paper shortage became more acute.

When, therefore, the defendant Streicher wrote in his paper in 1935—Document GB 169—that the 15 years work of enlightenment of the "Stuermer" attracted to National Socialism an army of a million of "enlightened" members, he did claim a success for which there was no foundation whatsoever. The men and women who joined the party after 1933 did not apply for membership as a result of the so-called enlightenment work of the "Stuermer," but either because they believed the Party's promises, hoping to derive advantages from it or, as the witness Severing expressed it, because by belonging to the Party they wanted to insure themselves against political persecutions.

The sympathy for the party and its leadership very soon decreased considerably. Also the defendant Streicher, lost authority and influence in an ever-increasing measure even in his own district (Gau) of Franconia, at least from 1937 on. The reasons herefore are sufficiently known.

Toward the end of 1938 he saw himself deprived of practically all political influence even in his own district. The controversy between him and Goering ended with the victory of the latter. Hitler, upon the urgent request of the defendant Goering, had dropped Streicher completely, as the Commander in Chief of the Luftwaffe at that time was naturally more important and far more influential than Gauleiter Streicher. The defendant even had to tolerate that the aryanization carried out in the district of Franconia was being re-examined for its correctness by a special commission sent by Goering. In the course of the year 1939 Streicher was completely pushed aside and was even forbidden to talk in public. At the outbreak of the war, in contrast to all other Gauleiters, he was not even appointed to the position of Wehrkreiskomissar of his own district.

During the last phase, in the years of the war, the defendant Streicher had no political influence whatsoever. As of February 1940 he was removed from his position as a Gauleiter and lived on his estate in Pleikershof, cut off from all connections. Even party-members were forbidden to visit him there. From the end of 1938, he had no connections whatsoever with Hitler, by whom he had been completely abandoned from that time on.

In what way now did the "Stuermer" exert any influence during the war period?

It can be said that during the war the "Stuermer" aroused no considerable attention any more. The grimness of the time, the anxiety for relatives on the front, the battles at the front, and finally the heavy air attacks completely diverted the German people's interest from questions dealt with in the "Stuermer."

The people were fed up with the continuous repetition of the same assertions. The best proof of how little the "Stuermer" was desired as reading matter is ascertained by the fact that in restaurants and cafes the "Stuermer" was always readily available at the news stands, whereas other papers and magazines were forever taken up.

The circulation total decreased steadily and irresistibly. The influence of the "Stuermer" in the political sphere became nonexistant. During the already mentioned periods the "Stuermer" was being rejected by large circles of the population from the very start. There can be no idea of the exertion of an influence by the "Stuermer" upon the German people or even upon the party. Its crude style, its often pornographic illustrations, and its one-sidedness aroused manifold displeasure.

Although the German people, for years, had been practically deluged with Nazi propaganda, or rather because of that very fact, a journal such as the "Stuermer" could exert no influence upon its inner attitude. Had the German people—as is maintained by the prosecution—actually been saturated with the spirit of racial hatred, other factors certainly would have been far more responsible for it than the "Stuermer" and would have contributed far more essentially to a hostile attitude toward the Jews.

But nothing of such nature can be established. The general attitude of the German people was not anti-Semitic, at any rate not in such a sense or to such a degree that they would have desired or approved of physical annihilation of the Jews. The official Party propaganda in regard to the Jewish problem had exerted no influence upon the broad masses of the German people and it had not educated them in the direction desired by the State leadership.

This can already be ascertained from the fact that it was necessary to decree a number of legal regulations in order to segregate the German population from the Jewish. The first example of this is the so-called Law for the Protection of German Blood and Honor (Rassenschutzgesetz) of September 1935, by the provisions of which any racial intermingling of German people with sectors of the Jewish population was subjected to the death penalty. The passing of such laws would not have been necessary had the German people been predisposed to an anti-Semitic attitude, for they would then of their own accord have insisted upon a segregation from Jews.

The law for the elimination of Jews from the German economic life, promulgated in November 1938, is running along the same line. In a people hostile toward the Jews, any trade with Jewish circles would have necessarily ceased and their business would have automatically come to a stand-still.

In reality, however, the intervention of the state was required to eliminate Jewry from the economic life.

The same conclusion can be drawn from the reaction of the greater part of the German populace to the demonstrations carried out against the Jews during the night from 9th to 10th November 1938.

It is proven that these acts of violence were not committed spontaneously by the German people but that they were organized and executed with the aid of the state and party apparatus upon instructions of Dr. Goebbels in Berlin.

The result and the effect of these demonstrations directed by the state, which in a cynical way were portrayed abroad as an expression of indignation of the German people over the assassination of the secretary of the Embassy in Paris, von Rath, were totally different than had been visualized by the originators of this demonstration.

These acts of violence and excesses, based upon the lowest instincts, were unanimously rejected in the circles of the party and even of its leadership.

In place of creating hostility toward the Jewish population they roused pity and compassion with their fate.

Hardly any other measure taken by the NSDAP was ever rejected in such a way on all hands. The effect upon the public was so incisive that the defendant Rosenberg in his capacity of "Gauleiter" found it necessary to make an address in Nurnberg, warning against an exaggerated sympathy for the Jews. According to his deposition he did not do this because he approved these measures but only in order to strengthen by his influence the heavily impaired prestige of the party.

Previously, as it follows from the testimony of the witness Fritz Herrwerth examined here, he refused to SA-Obergruppenfuehrer v. Obernitz to take part personally in the planned demonstration and designated the latter as being useless and prejudicial. He publicly expressed this standpoint later also, during a meeting of the League of Jurists at Nurnberg. In doing so he took the risk of placing himself in an open opposition to the official policy of the State.

All these facts show that despite the anti-Jewish propaganda carried on by the Government, an actual hostility against the Jewish population did not exist in the people itself. Thus it is proved already that Streicher's publications in the "Stuermer" as well as his speeches have neither had a provoking effect upon the German people in the sense upheld by the prosecution.

Therefore the proof for an incitement to the hatred of Jews, successfully carried out and leading to a criminal end, cannot be furnished by pointing to the general attitude of the German nation. But the prosecution has supported its reproach to that effect by the specific assertion that only a nation educated to the absolute hatred of Jews by men like the defendant could approve of such measures like the mass extermination of Jews. Thereby the reproach is made to the totality of the Germans that they knew about the extermination of the Jews and they approved of it, a reproach, the severity and consequences of which upon the whole future of the German nation, cannot be estimated at all.

But did really the German nation approve of these measures?

Only an occurrence which is known can be approved of. Therefore, should this assertion of the prosecution be considered as proved, logically it must also be considered as proved that the German nation actually knew of these occurrences.

However, the hearing of evidence to that effect has shown that the "Reichsfuehrer" SS Himmler, charged with the mass assassinations by Hitler, and his close collaborators have surrounded this whole story with the veil of deepest secrecy. By threatening with the most severe punishments any violation of the absolute commandment of silence which was imposed, they managed to lower before the events in the East in the extermination camps, an iron curtain which hermetically shut off these facts from the public.

Hitler and Himmler prevented even the corps of highest leaders of party and state from gaining any insight and information. Hitler did not hesitate to supply with false informations even his closest collaborators like Reich Minister Dr. Lammers, who was heard here as a witness, and to make him believe that the removal of the European Jews to the East meant their settlement in the Eastern territories and not at all their extermination. Although the statements of the defendants may deviate in many points, yet in this connection they all agree so completely one with the other and with the statements of other witnesses, that the veracity of their testimonies simply can not be questioned. If it was not even possible for the defendant Frank in his capacity as Governor General of Poland to get through to Auschwitz, because without Himmler's special consent he himself was denied entrance, then this fact speaks for itself.

If, however, even the leading personalities of the Third Reich with the exception of a very small circle were not informed and if even they had at best very vague informations, then how could the public at large have known it! Under these circumstances the possibilities for finding out what was going on in the camps were extremely scanty.

For the majority of the people, foreign news was eliminated as a source of information. Listening to foreign radio stations was threatened with the heaviest penalties and therefore did not take place. And when it did, the news broadcast by foreign radio stations concerning events in the East were, however or rather because they corresponded to facts, so coarse, so horrible beyond any human understanding, that they were bound to appear to any normal individual, and in fact did, as intentional propaganda.

On the whole, Germany could gain knowledge of the extermination measures against Jewry only from people which either themselves were working in the camps or came in contact with the camp or its inmates, and, lastly, from former concentration camp inmates.

There is no need to explain that members of the camp personnel kept silent, not only because they were strictly compelled to do so, but also in their own interest. Furthermore, it is known that Himmler had threatened death penalty for any information from the camps and the spreading of information about the camps, and that not only the actual culprit, but also his relatives, were threatened with this punishment. Finally, it is known that the extermination camps proper were so hermetically cut off from any contact with the world that nothing concerning the events which took place therein could penetrate to the public. The camp inmates who came into contact during their work with fellow-workers kept silence because they had to keep silent. People who came to the camps were also under the threat of this punishment, inasmuch as they were at all able to obtain some insight, a thing which was all but impossible in the extermination camps.

From these sources, accordingly, a knowledge for the German people could not flow.

But the absolute order for silence was compulsory to a still greater measure for every concentration camp inmate who had been released. Anyhow, hardly anybody ever came back to life from the actual murder camps. But if, once in a time, a man or a woman was released, the danger of their being sent back into the camp was hovering above them if they infringed on order for silence, and this in addition to the other threatened punishments, and this renewed detention would have been tantamount to gruesome death.

It was therefore nearly impossible to learn from released concentration camp prisoners positive facts concerning the occurrences in the camps. This being the case with regard to normal concentration camps in Germany, it applied in a still greater measure to the extermination camps.

Every lawyer who, as I did, defended people before their detention in a concentration camp and who was visited by them again after their release will be able to confirm that it was not possible, even for a man holding such a position of trust and under the protection of a lawyer's professional secret, to get former concentration camp inmates to talk.

If men such as Severing, who testified here, a social democrat of long standing who was highly trusted by his party comrades and who was, because of this, in touch with many former concentration camp inmates came to know the real facts connected with the extermination of the Jews but very late and even then to a very restricted extent, then such considerations ought to apply even more to any normal German.

It can be derived with absolute certainty from these facts that the government, that Hitler and Himmler wanted under all circumstances to keep secret the genocide (Ausmordung) of the Jews, and this forms the base for another argument—in my opinion, a cogent one—against the anti-Semitism of the German people asserted by the prosecution.

If the German people had indeed been filled with such a hate against Jewry as the prosecution affirms, then such rigorous methods for secrecy would have been superfluous. On the contrary, if Hitler had been convinced that the German nation saw in the Jews its principal enemy, that it approved of and desired the extermination of Jewry, then he would have been forced, of needs, to publish the plans for and likewise the accomplishment of the extermination of this very enemy. Under the sign of total war as constantly propagandized by Hitler and Goebbels, there would indeed have been no better means to strengthen the faith in victory and the will of the people to fight than the information, that Germany's principal enemy, this very Jewish people, had already been annihilated.

An unscrupulous propagandist such as Goebbels certainly would not have failed to use such a striking argument if he could have taken as a basis the necessary presupposition, that is, the German people's determined will to exterminate the Jews.

However, the "final solution" of the Jewish question had by all means to be kept secret even from the German people who had, for years, stood under the hardest possible pressure by the Gestapo. Even leading persons of state and party were not allowed to learn of the "final solution."

It seems that Hitler and Himmler were themselves convinced that even in the midst of a total war and after decades of education and gagging by National Socialism, the German nation and, above all, its armed forces would have reacted most violently to the publication of such a policy against the Jews.

The policy of secrecy followed here cannot be explained by any consideration for enemy nations. In the years 1942 and 1943 the whole world was already engaged in a bitter war against National Socialist Germany. An aggravation of this struggle hardly seemed possible, certainly not by publishing facts which had long since become known abroad. Aside from this, the consideration of making a still worse impression on the enemy countries could hardly influence men as Hitler, Goebbels, and Himmler.

If they would have counted even upon the smallest possible positive result of a publication of the genocide of the Jews, then they certainly would not have omitted such publications, on the contrary, they would have tried by all means to strengthen the faith in victory of the German people therewith. The fact that they have not done so is the best proof that even they did not consider the German people as radically anti-Semitic, and it is the best proof too, that one cannot speak of such anti-Semitism on the part of the German people.

Therefore, even had the defendant, with his publications, aimed at such an end, he did not reach such a goal.

In this connection, light should be thrown upon the part attributed by the prosecution to the defendant Streicher, that he had educated the German youth in an anti-Semitic spirit and that he had sunk the poison of anti-Semitism so deeply into the hearts of the youth that this pernicious result would make itself felt a long time after actual life yet.

What the defendant is mainly blamed for in this connection, reproach is to be seen in the fact that young people, due to the Streicher education in hatred toward Jews, were supposed to have been ready to commit crimes against Jews, which otherwise they would not have committed and that youth thus educated might be expected to perpetrate such crimes in the future too.

The prosecution here relies mainly on the juvenile books which were put out by the publishing house of the Stuermer and some announcements addressed to Youth which appeared in this paper.

Far be it from me to extenuate or defend these products. Evaluation of them can and must be left to the Tribunal. In accordance with the basic principle of the defense the only question to be taken up here will be whether or not the defendant, in one way or another, influenced the education of Youth toward criminal hatred of Jews.

As far as the books which have been mentioned are concerned, it must be said that for the greater part German Youth did not know them at all, much less read them. No evidence has been produced to substantiate the contrary which is assumed by the prosecution.

The healthy common sense of German Youth refused such stuff. German boys and girls preferred other reading material. It may well be emphasized here, that neither the contents of nor the illustrations in these books could prove in any way attractive to youth. They were of necessity much more likely to be avoided. Of special importance in regard to this point is the fact that defendant Baldur von Schirach, the man responsible for the education of the whole body of German youth, as a witness declared under oath that the mentioned juvenile books of the publishing company were neither circulated by the Hitler Youth leaders nor found a circle of readers among the Hitler Youth.

The witness made the same assertions for the "Stuermer." One of his closest co-workers, witness Lauterbacher, declared on this subject that the "Stuermer" was actually forbidden for the Hitler Youth by defendant von Schirach.

It is clear that the very style and the pictures of the "Stuermer" were not suited to attract the interest of a young person or even to offer him ethical support. The measure taken by the Reich Youth leaders is therefore quite understandable.

If some of the "Stuermer" articles submitted by the prosecution seem to indicate that the "Stuermer" was read in youth circles and there produced a certain effect, then it should be said on this point that typical works, that is, works ordered for propaganda purposes were concerned. No proof whatsoever has been furnished for the assertion of the prosecution that German youth harbored criminal hate toward Jews.

Accordingly, neither the German nation nor its youth can be termed criminally anti-Semitic in the sense of the indictment, and so all foundation is taken from the charge made against the defendant Streicher that he educated the youth and the nation on these lines.

Now, one might be tempted to assume that the "Stuermer" exercised an especially great influence upon the organizations of the party, the SA and SS, but this was not the case either.

The SA, the largest mass organization of the party, rejected the "Stuermer" in the same way as the mass of the people did. Its publications were "The SA Leader" and "The SA." From these, the mass of the SA drew the foundation of their ideology. These publications do not contain even one article written by the pen of the defendant Streicher. If the latter had really been the man the prosecution thinks him, the authoritative and most influential propagandist of anti-Semitism, he would necessarily have been called in for collaboration in these publications, which were issued to instruct the SA in the Jewish question. A publication, aiming at ideological education, would never have been able to dispense with the collaboration of such a man.

The fact that Julius Streicher never once made an utterance of any kind in these papers demonstrates again that the picture, drawn of him by the prosecution, does not correspond in any way to the actual facts. Through his own publication, the defendant Streicher could not gain any influence over the SA, and the columns of "The SA Leader" and "The SA" were closed to him. Even the highest SA leaders declined to advocate his ideas. With regard to this the SA deputy chief of staff "SA-Obergruppenfuehrer" Juettner, made the following statement when he was heard as witness before the commission on 21 May 1946, he said:

"At a leader conference, the former SA chief of staff, Lutze, expressed his wish that there should be no propaganda for the "Stuermer" in the SA. In certain groups the "Stuermer" was even prohibited. The contents of the "Stuermer" disgusted and repelled most of the SA men. The policy of the SA with regard to the Jewish question was in no way directed at the extermination of the Jews, the fight aimed only at preventing a large scale immigration of Jews from the East."

Thus the ideology of the "Stuermer" was rejected on principle by the individual SA man as well as by the SA leaders, and it is, therefore, out of the question to speak of any influence of Streicher upon the SA.

Not only was the defendant Streicher not asked to collaborate in SA publications, his articles did not appear in any other newspapers and publications. Neither in the "Voelkischer Beobachter" nor in other leading organs of the German press was he allowed to say a word, although, according to the will of the propaganda ministry, the enlightenment in the Jewish question was supposed to belong to the noblest tasks of the German press.

Even otherwise, the defendant Streicher did not get any opportunity from the state leadership or the propaganda ministry to impress his ideas upon a wider circle. The defendant Fritzsche, the man who had also the right of decision in the propaganda ministry declared as a witness that Streicher never exerted any influence upon propaganda, that he was completely disregarded.

Thus, in particular, he was not entrusted with broadcasting speeches, although just an address over the radio would have had an entirely different mass effect than an article in the "Stuermer" which necessarily affected only a limited circle. The fact that even the official propaganda of the third Reich did not utilize the defendant Streicher makes apparent that his activity would not have promised any effect, that in fact he did not exert any influence at all. The official German state government recognized Streicher as what he actually was, the unimportant publisher of a really unimportant weekly.

The fundamental attitude of the German people, as once more it must be said with all clarity, was as little radically anti-Semitic as that of the German Youth and also that of the party organizations. Any success in instigating and inciting to criminal anti-Semitism is therefore not proven.

I now come to the last and decisive part of the accusation, i.e., to the examination of the question: Who were the persons mainly responsible for the orders given for the mass-extermination of Jewry, how was it possible that men were found ready to execute these orders and whether, without the influence of defendant Streicher, such orders would have neither been given nor executed.

The main person responsible for the final solution of the Jewish question, the extermination of Jewry in Europe, is without doubt Hitler himself. Though this greatest trial of all in world history suffers from the deficiency that the chief offenders are not sitting in the defendants' box, because they are either dead or not to be found. The facts ascertained have, nevertheless, resulted in cogent conclusions concerning the actual responsibility.

It can be considered as proved that beyond any doubt Hitler was a man of unique and even demoniacal brutality and disregard, whereto was added in the latter years that he had lost all sense of proportion and all self-control.

Ruthless brutality was the principal feature of his character, this became apparent for the first time in its full force when the so-called Roehm Rebellion was suppressed in June 1934. On this occasion Hitler did not hesitate to have his oldest fellow-combatants shot without any process of law. His unrestrained radicalism was further revealed in the way the war with Poland was conducted. Only because he feared an antagonistic attitude toward Germany on the part of leading circles in the Polish nation did he order their ruthless extermination. His orders at the beginning of the Russian campaign were still more drastic. Already at that time he ordered the extermination of Jewry in separate actions.

These examples show beyond doubt that respect for any principles of humanity was alien to this man. Furthermore the proceedings, through the depositions of all defendants, have corroborated the fact that Hitler in basic decisions was not open to any outside influence.

Hitler's basic attitude toward the Jewish question is known. He had become an anti-Semite already during his time in Vienna in the years before the first world war. However, no actual proofs exist that Hitler from the very beginning had such a radical solution of the Jewish question in mind as was finally effected in the annihilation of European Jewry. When the prosecution declares that from the book "Mein Kampf" there was a direct road leading to the crematories of Mauthausen and Auschwitz, that is only an assumption, but no evidence for it has been given. The evidence speaks much rather for the fact that Hitler too wanted to see the Jewish problem in Germany solved by way of emigration. This thought, as well as the position of the Jewish part of the population under alien laws, was the official state policy of the Third Reich.

Many of the leading anti-Semites considered the Jewish question as settled after the laws of 1935 had been passed. The defendant Streicher shared this opinion. A more severe attitude of Hitler's in the Jewish question cannot be traced further back than to the end of 1938, or beginning of 1939. Then only it became apparent that in case of war—which he believed was propagated by the Jews—he planned a different solution.

In his speech at the Reichstag on 30 January 1939 he predicted the extermination of the Jewry in case a second world war was let loose against Germany.

He expressed the same ideas in a speech made in February 1942, at the occasion of the 20th anniversary of the day the party was founded. And finally also his testament confirms his exclusive responsibility for the murdering of European Jewry as a whole.

Though a more severe attitude on the Jewish question had been taken up by Hitler since the beginning of the war there is nothing that goes to show that he visualized the extermination of the Jews right at the beginning of the war. It can be clearly seen that this last resolution, no doubt, came about when Hitler, presumably as early as 1942, saw that it was impossible to bring the war to a victorious end for Germany.

It can be assumed almost with certainty that the decision for exterminating the Jews was made by—as were almost all of Hitler's plans—and originated exclusively from himself. It can not be ascertained with certainty to what extent others, who were closely attached to Hitler, brought their influence to bear on him.

If such influences did exist they can have only come from Himmler, Bormann, and Goebbels. That much can be stated beyond any doubt at any rate that during the decisive period from September 1939 to October 1942 Streicher—things being as they were—neither influenced Hitler nor would have been able to influence him.

At this time Streicher was living, deprived of all his offices and completely left in the cold, at his farm in Pleikershof. He had no connection with Hitler neither personally nor by correspondence. This has been proved beyond doubt by the statements of witness Fritz Herrwerth, Adele Streicher, and the statement under oath of the defendant himself. But that Hitler was instigated to his orders of wholesale murder by his reading of the "Stuermer" can, I believe, not be maintained in earnest.

So it has been made clear that defendant Streicher had no influence at all on the man who made the decision and on the decisive order to exterminate the Jewry.

In October 1942 Bormann's decree came out ordering the extermination of Jewry (Doc. 3244–PS). This order came from Hitler, there is no doubt about that, and went to Reichsfuehrer SS Heinrich Himmler who was charged with the actual execution of the extermination of the Jews.

He, for his part, charged with the final execution Chief of the Gestapo Mueller and his commissioner for Jewish affairs Eichmann. So after Hitler, these three men are the main responsible ones.

That Streicher had any possibility of influencing them or actually supposedly influenced them has not been proved.

He ascertains irrefutably that he never knew either Eichmann or Mueller, and that his connection to Himmler was but loose and far from being friendly.

That Himmler was one of the most radical anti-Semites of the party need merely be mentioned. From the beginning he had advocated a merciless fight against Jews and was moreover, from all that we know of him, not a man who would have allowed himself to be influenced by another in matters of principle. But aside from that, a comparison of the two personalities shows a priori that Himmler was in every way the stronger and more superior man so that even for this reason the exertion of any influence by defendant Streicher on Himmler may be ruled out.

I believe I may refrain from further illustration of this point.

I now come to the question whether the activity of defendant Streicher had a decisive influence on the men actually executing the orders that is on the one hand on members of special purpose groups (Einsatzgruppen) and on the other hand on the executive commandos in the concentration camps (KZ's) and whether it was at all necessary to prepare these men spiritually and intellectually to make them willing to execute such measures.

The Reichsfuehrer SS stated unequivocally in his speeches in Nikolajew, Posen, and Charkow, which already have often been mentioned here, not only, that he with Hitler was responsible for the final solution of the Jewish question, but also that the execution of the orders had been possible only by the utilization of forces selected by himself among the SS.

We know from Ohlendorf's testimony that the so-called Einsatzgruppen (Task force) consisted of members of the Gestapo and the SD, of companies of the Waffen SS, of members of the police force with long years of service, and of natives.

It must be stated as a primary statement that the defendant Streicher never had the slightest influence on the ideological attitude of the SS. There is no shadow of a proof among the extensive material of evidence of this trial that Streicher had any connections with the SS. The alleged enemy No. 1 of the Jews, the great propagandist for the persecution of the Jews as he has been pictured by the prosecution, the defendant Streicher, never had the opportunity to write in the periodical "Das Schwarze Korps" (The Black Corps) or even in "SS-Leithefte" (SS-Guide Magazine). These periodicals alone, however, as the official mouthpieces of the Reichsfuehrer SS, determined the ideological attitude of the Schutzstaffel. These SS periodicals determined their attitude toward the Jewish question. In these circles the "Stuermer" was read just as little as in other circles, it was rejected.

Himmler himself rejected Streicher ironically as an ideologist. Therefore, the defendant Streicher could not have influenced ideologically the SS members of the "Einsatzgruppen," far less the old soldiers of the police and the least of all the foreign units.

Also the execution squads in the concentration camps could not be ideologically determined by him. Those men originated for the most part from the Totenkopfverbaende (scull units), that is, the old guard units, for whom the above mentioned is true in a higher degree. Added to this is the fact that the experienced police soldiers, as well as the SS men with long years of service were trained in absolute obedience to their leaders. Absolute obedience to a Fuehrer command was a foregone conclusion for both.

Even those experienced police men, accustomed to absolute obedience, even the experienced SS could not be without any more ado entrusted by Himmler to carry out the execution of Jews.

Rather, Himmler had to select men in which he trusted as heads of those execution squads and make them personally responsible for their duties, he pointed out explicitly that he would take all responsibility and that he himself did not but pass on a definite order of Hitler.

So little did even those men, who were supposed to be, according to the assertion of the prosecution, the Elite of Nazism become enemies of the Jews in the sense as asserted by the indictment, that the entire authority of the head of State and Fuehrer and of his most brutal follower Himmler was necessary to force upon the men responsible for carrying out the execution orders the conviction that their order was based on the will of the authoritary Head of the State; an order which, according to their conviction, had the power of a fundamental State law, therefore was above all criticism.

Thus it was not ideological reasons nor Streicher's instigation of those who were, as the prosecution contends, commissioned with the carrying out of annihilation that made these men carry out orders, but exclusively and solely the obedience to an order from Hitler transmitted to them by Himmler, and the knowledge that not to carry out a Fuehrer order meant death.

Thus in this respect too Streicher's influence has not been proved.

The accusations brought against the defendant by the prosecution are herewith exhausted.

But in order to reach a conclusion, to form a judgment of the defendant that does full justice to the actual findings, it seems necessary to give once more a short summary of his personality and his activity under the Hitler regime.

The prosecution considers him to be the leading anti-Semite and the leading advocate of the most violent determination to annihilate Jewry.

This conception, however, does no more justice to the role of the defendant and his actual influence than it does to his personality. Already the manner in which the defendant was used in the Third Reich and called in for the propagandizing and for the final solution of the Jewish question shows the incorrectness of the conception held by the prosecution. The only time the defendant was called upon to take an active part in the fight against Jewry was in his capacity of a chairman of the action-committee for the anti-Jewish boycott-day on 1 April 1933. He showed an attitude on that day which stands in direct contrast to his utterances in the "Stuermer." One can see from it that the utterances in his paper which are under scrutiny were purely for the purpose of creating a tendency. In spite of the fact that on that day he could have used the entire power of the state and of the party against Jewry, he merely ordered the identification of Jewish places of business and the guarding of Jewish business places. In connection with this he gave explicit orders that any molestation or act of violence against the Jews as well as damaging of Jewish property was forbidden and punishable.

In the time which followed no further use at all was made of the defendant. Not even for the ideological founding of the showdown with Jewry was he consulted. Neither through the press nor over the radio could he express his ideas. Neither the Party in its training letters (Schulungsbriefe) nor the organizations in their periodicals availed themselves of his pen for the clarification of the Jewish question.

Hitler did not charge him, but the defendant Rosenberg, with the ideological training of the German people. The latter was responsible for the Institute for the Investigation into the Jewish Question, not the defendant Streicher, he was not even contemplated as collaborator in this institute.

The defendant Rosenberg was commissioned with the arrangement of an anti-Jewish congress in 1944. This assembly, however, never took place, but it is significant that the participation of the defendant Streicher was not even planned.

The entire anti-Jewish laws and decrees of the Third Reich were drafted without his participation. He was not even called in for the drafting of the race laws which were proclaimed on the Party rally in Nurnberg in 1935. The defendant Streicher did not take part in any conference concerning a question of some importance during peace and war. His name is not on any list of participants, on any protocol. Not even in the actual discussions is his name mentioned once.

The fight against Jewry in the Third Reich became more severe from year to year, especially after the outbreak and in the course of the war. In contrast to this, however, the influence of the defendant Streicher decreased from year to year. Already during the year 1939 he was almost entirely pushed aside, without any connection to Hitler or other leading men of State and party. Since 1940 he was relieved of his office as Gau-Leader and politically a dead man since.

If the defendant Streicher really had been the man whom the prosecution believes him to be, his influence and his activity would have increased automatically with the intensification of the fight against the Jews. The end would not have been, as it actually was, political impotence and banishment, but the commission to carry out the destruction of Jewry.

By writing ad nauseam on the same subject for years in a clumsy, crude, and violent manner the defendant Streicher—as cannot be denied—has brought upon himself the hatred of the world. He has hereby created a strong feeling against him which resulted in rating his importance and his influence far beyond his real importance and which now entails the danger for him that his responsibility will be misjudged likewise.

The defendant who in this case has an ungrateful and difficult task had to limit himself to presenting those aspects and facts which allow a clear recognition in its true extent of the importance of this man and of the role which he played in the tragedy of National Socialism.

But it cannot be the task of the defense to deny undeniable facts and to shield actions for which simply no excuse exists.

The fact remains that this defendant took part in the destruction of the Main Synagogue of Nurnberg and thus allowed a place of religious worship to fall into decay.

The defendant states as an excuse that his aim hereby was not the demolition of a building destined for religious worship but the removal of an edifice which did not fit into the style of the Nurnberg old city and had a disturbing effect and that this, his opinion, had been shared by art experts. That this is truth was proved by the fact that he had left the second Jewish house of worship untouched until it finally and without him having anything to do with it went up in flames in the night from the 9th to the 10th November. However that may be, the defendant has shown here the same ruthlessness as in his other actions. He himself has to account here for his actions, the defense cannot shield him. But here too it must be said that the population of Nurnberg disapproved of these actions clearly and unmistakably. It was clear to any impartial observer that the people viewed such actions with icy coldness and only by brutal force could be made to put up with such measures and to witness such absurdities.

It is just as impossible for the defense to express any opinion regarding the reopening of the question of the ritual murder myth. These articles, to be sure, found no interest whatsoever, but their tendency is clear. The only point which, beside the good faith which we have to grant him, is extenuating for the defendant is the fact that it was not he who wrote these articles, but Holz; he cannot avoid however that the fact is held against him that he allowed it to happen.

It must be hard to understand that the defendant still took part in publication of the "Stuermer" after having long since been politically crippled and sent into exile. This very fact better than anything else reveals his one track mind.

When the prosecution accuses the defendant of having aimed at physical annihilation of the Jews and of having prepared the way for this later result with the things he published, then I would like to refer to the statements of the defendant given under oath when he was interrogated as a witness to which I am here referring to their full extent.

The defendant claims that in the long series of "Stuermer" articles published since its beginning there was none which asked for real acts of violence against Jews. Furthermore, that among the more than thousand issues there could be found only about 15 which contained expressions which could be held against him in the meaning of the indictment.

On the contrary, the defendant argued that his articles and his speeches always had displayed an unmistakable tendency to bring about a wholesale and universal solution of the Jewish problem, since a partial solution of any kind could not have any purpose and did not get at the heart of the problem. Even from this view point he had always expressed himself unequivocally against measures of violence of any kind and he would never have approved of an action, as was finally carried out by Hitler in such a gruesome manner.

There must be serious doubts, whether this appears to prove to the defendant that he ever approved of the resultant mass murder of Jewry and I leave the decision about this to the Tribunal. He personally however refers to the fact that he did not receive certain knowledge of these wholesale murders before 1944, a fact which was corroborated by the statements of the witnesses Adele Streicher and Hiemer.

He considered the articles published in the Isr. Wochenblatt (Zionist Periodical) as a means of propaganda and consequently did not believe them. In his favor is the fact that up to the fall of 1943 he did not express in any article a satisfaction over the fate of Jewry in the East.

When he wrote at that time about the vanishing of the Jewish reservoir in the East it cannot be surmised that he had available any source for an authentic confirmation. He might of course have been of the opinion that this vanishing process was not identical with physical annihilation but was rather to be considered in the light of evacuation of the collected Jewish population to foreign countries or into territory of the Soviet Union.

As no proof has been presented for the fact that the defendant had received hints from any quarters with regard to the intended extermination of Jewry, he could not have conceived such a satanic occurrence, as it appears to be absolutely inconceivable to the human mind. Certainly, it can not be assumed that the mental capacity of the defendant should have put him into a position to foresee such a solution of the Jewish question, which could only have originated from the brain of a person no longer a master of his mind.

The defendant describes himself as a fanatic and seeker of truth. He professes to have written nothing and to have expressed nothing in his speeches, which he had not taken from some authentic source and corroborated accordingly.

There is no doubt he was a fanatic. The fanatic, however, is a man who is so possessed or convinced of an idea or an illusion that he will not be open to any other consideration and is convinced of the correctness of his idea and nothing else. For the psychiatrist it is a sort of mental cramp.

Every kind of fanaticism is not far from the ideas of a maniac. Together with it there is to be found as a rule a remarkable overestimation and overevaluation of one's own personality and of its influence on the world around it. Not one of the defendants here on trial shows such a discrepancy between fact and fancy as does the defendant Streicher.

The prosecution presented what he appeared to be to the outside world. What he actually was and is, has been shown by the trial.

But only actual facts can form the basis for the judgment. Consider in your judgment also that the defendant in his position as Gau-leader of Franconia showed also many humane features, that he had a great number of political prisoners released from concentration camps, which even resulted in criminal proceedings against him. It should also be mentioned that he treated the prisoners of war, and foreign workers working on his estate, very well in every respect.

Whatever the judgment against the defendant Streicher may be, it only will be concerned with the fate of an individual.

It seems to be established, however, that the German people and this defendant were never in agreement on this important question. The German people always disapproved the aims of this defendant as he expressed them in his publications and retained its own opinion of and attitude toward the Jews. The assumption of the prosecution that the biased articles in the "Stuermer" had found any echo or ready acceptance among the German population or even an attitude ready to accept criminal measures is herewith fully refuted.

The overwhelming majority in the German nation preserved their sound sense and showed themselves disinclined toward all acts of violence.

It may therefore assume that it will be declared free of all moral complicity and co-responsibility of those crimes before the public tribunal of the world and will again take its place in the ranks of the nations.

The decision as to guilt or innocence of this defendant I shall however place in the hands of the Tribunal.

2. FINAL PLEA by Julius Streicher

Gentlemen of the Tribunal.

At the beginning of this trial I was asked by the President whether I pleaded guilty in the sense of the Indictment. I answered that question in the negative.

The accomplished proceedings and the taking of evidence have confirmed the correctness of my statement given at that time.

It has been established:

1. Mass killings exclusively and without influence were carried through by order of the head of the State, Adolf Hitler.

2. The execution of the mass killings was carried through without the knowledge of the German people and under complete secrecy by the Reichsfuehrer SS, Heinrich Himmler.

The Prosecution asserted that the mass killings would not have been possible without Streicher and his "Stuermer." The Prosecution neither offered nor submitted proof for this assertion.

It is clearly established that on the occasion of the anti-Boycott Day in the year 1933, which I was given the order to lead, and on the occasion of the demonstration of 1938 ordered by Reichsminister Dr. Goebbels, I, in my capacity as Gauleiter, neither ordered, demanded, nor participated in any violations against Jews.

It is further established that in many articles in my periodical, the "Stuermer," I represented the Zionist demand for the creation of a Jewish state as the natural solution of the Jewish problem.

These facts prove that I did not wish for a solution of the Jewish problem in a forcible manner.

If I, or other authors, in some articles of my weekly paper, the "Stuermer," mentioned a destruction or extermination of Jewry, then these words were sharp utterances in reply to provoking statements of Jewish authors in which the extermination of the German people was demanded. The mass killings ordered by the leader of the State, Adolf Hitler, according to his last testament, were to be a revenge, a reprisal which was only carried through because of the then recognizable unfavorable course of the war.

These actions of the leader of the State against the Jews can be explained by his attitude upon the Jewish question, which thoroughly differs from mine. Hitler wanted to punish Jewry because he held them responsible for the unleashing of the war and for the bombs dropped on the German civilian population.

It is deeply regrettable that the mass killings which can be traced back to a personal decision of the leader of the State, Adolf Hitler, have led to a treatment of the German people which also must be considered as being inhumane. The executed mass killings I reject in the same way as they are being rejected by every decent German.

Gentlemen of the Tribunal.

Neither in my capacity as Gauleiter nor as political author have I committed a crime, and I therefore look toward your judgment with good conscience.

I have no request to make for myself. I only have a request for the people from whom I originate. Gentlemen of the Tribunal, fate has given you power to pronounce every judgment. Do not pronounce a judgment which would imprint the stamp of dishonesty upon the forehead of an entire nation.

XII. WALTER FUNK

1. FINAL ARGUMENT by Dr. Fritz Sauter, Defense Counsel

Gentlemen of the Tribunal:

I have the task to examine the case of the defendant Dr. Walter Funk, that is to say, I am to deal with a topic which unfortunately is especially dry and prosaic.

General

The total course of this trial and the particular evidence offered in his own case have proven that the defendant Funk, at no time of the National Socialist regime and in none of the cases indicted here, played a decisive role.

Funk's authority of decision, was always limited by superior power of authority. The statement of the defendant during his personal examination, that he was allowed to proceed as far as to the door, but was never permitted to enter, has been proven by the evidence to be quite correct.

In the Party Funk was entrusted with several tasks only during the last year prior to the seizure of power, that is in 1932. These however were of no practical significance, as they were of short duration. From the seizure of power on Funk was never appointed to an office in the Party. He was never a member of any party organization, neither of the SS nor the SA, nor of the Corps of Political leaders. Funk held a Reichstag-Mandate only for the brief space of slightly more than six months prior to seizure of power. Consequently he was not a member of the Reichstag at the time when the fundamental laws for the consolidation of National Socialist power were passed.

The laws of that time, especially the Enabling Act, presented under 2962–PS and 2963–PS, with the responsibility for which Funk is also charged, were accepted by the Reichs Cabinet at a time when Funk was not yet a member of the Cabinet. He became a member only at the close of 1937, by virtue of his appointment as Minister of Economy (Reichswirtschaftsminster), that is at a time when Cabinet sessions took place no longer. Funk, as press chief of the Reich-Cabinet, had neither a seat nor a vote in the cabinet and could not exert any influence whatsoever upon the contents of the bills. (Statement of Lammers, on pages 7394 and 7395 of the official transcript of 8 April 1946.) The same applies to racial laws, the so-called Nurnberg laws.

Funk had closer relations to the Fuehrer only during the period of 1½ years, in which he held regular press conferences at Hitler's in his capacity as Press-chief of the Reich-Cabinet from February 1933 through August 1934, that is up to the death of Reich President von Hindenburg. Later, Funk met Hitler only very rarely. The witness Dr. Lammers in this respect states the following: Later he, (Funk) in his capacity as Reich Minister of Economy came to see Hitler only extremely rarely. He was not consulted in many conferences, conferences at which he should have been consulted. He complained to me about this frequently. The Fuehrer often raised objections. There were various reasons against Funk. He viewed Funk sceptically and did not want him (p. 7398 of the official transcript of 8 April 1946). Upon the question to the witness Dr. Lammers whether Funk had often expressed to him his grief about his unsatisfactory position as a Reich Minister for Economy and about his anxiety weighing heavily upon him due to the general conditions, Dr. Lammers replied: "I know that Funk had great worries and he was looking for an opportunity to discuss these with the Fuehrer. He had the fervent desire to have a discourse with the Fuehrer in order to be at least partially informed about the war situation." (That was in 1943 and 1944.) "With the best will, it was not possible for Funk to be received by the Fuehrer and it was not possible for me to get him to the Fuehrer." (Pp. 7401 and 7402 of the official German transcript of the afternoon of 8 April 1946.)

Funk, for the striking fact that during all his ministerial activity he was called to the Fuehrer conferences but four or five times, gives the explanation that Hitler did not need him. Hitler, up to 1942, issued his instructions in economic affairs to Goering, who, in his capacity as Plenipotentiary for the Four-Year-Plan, was responsible for the entire economy and, from the beginning of 1942, to Speer, who as Armament Minister, upon the grant of special authority could issue directives to all branches of production and who as of 1943 personally directed the entire production.

Therefore Funk never played the main part but rather a subaltern role in the economy of the National Socialist Reich. The co-defendant Goering specifically verifies this in his statement of 16 March (p. 6009 of the official German transcript) with the following words: By reason of the special authorities vested in me, he, Funk, certainly had to follow my instructions of economic nature in the sphere of the Ministry of Economy and of the Reichsbank. "I fully and exclusively assume responsibility for any instructions, issued by and any economic policy executed by Funk in his capacity as the Reich-Minister for Economy and President of the Reichsbank." In the session of 20 June even the defendant Speer, as witness declared, that in his capacity as Armament Minister he claimed for himself from the very beginning any authority of decision in the most important economical spheres, such as coal, iron and steel, metal, aluminum, and production of machinery. The entire management of energy and the total building program prior to Speer's commissioning at the beginning of 1942 was under the jurisdiction of Armament Minister Todt.

The evidence submitted by the prosecution in the case of defendant Funk, does not for the greater part bear on personal acts of Funk or instructions issued by him, but it bears rather on the various and manifold positions he occupied. On page 29 of the trial brief the prosecutor himself declares that the argument offered against Funk may be said to be inferential. The prosecution starts from the assumption that Funk, upon the basis of the many positions held by him, must have had knowledge of the various happenings, which are the subject of the accusation. The indictment refers, broadly spoken, to instructions and directives, issued by Funk personally only where the decrees of execution, issued by Funk for the carrying out of the Four-Year-Plan for the elimination of Jews from the economic life in November 1938, were concerned. This chapter will have to be dealt with separately.

At political and military conferences, Funk was not consulted. His position was one of a ministerial expert with far narrow limitations on authority of decisions.

As Reich-Minister for Economy Funk was subordinated to the Four-Year-Plan. Later the Armament Minister had superior authorities. And finally, as was proven by the testimony of witnesses Goering, Lammers, and Hayler, the Ministry for Economy assumed the state of a regular Trade-Ministry, which dealt essentially with the distribution of the consumer goods production and with technical problems in carrying out Foreign trade.

The Four-Year-Plan determined the use of gold and foreign currency in the Reichsbank. The decision about the amount of credits to be granted to the Reich with respect to the internal financing of the war was taken away from the Reichsbank at the time of Funk's assuming office as Reichsbank president. Thereby Funk is exonerated of any responsibility in the financing of the war. The responsible agency therefore was always the Reich-Finance-Minister.

Finally, as General Plenipotentiary for Economy Funk's task in August 1939 solely existed in coordinating civil agencies of economy for such measures as would guarantee a smooth reconversion from peace to war-time economy. The result of these consultations were the proposals which Funk presented to Hitler on 25 August 1939 in the letter which has been quoted several times under 699–PS, GB Exhibit 49. At his examination Funk stated that this letter did not portray matters correctly, since it was a purely private letter, a letter of appreciation for Hitler's birthday congratulations. This point will have to be taken up again later, since the prosecution especially emphasized the position of Funk as General Plenipotentiary for Economy.

Evidence shows that this was the most disputed but also the weakest position of Funk. With regard to the occupied territories Funk had no decisive authority whatsoever. This was demonstrated by all witnesses interrogated regarding this question. But all witnesses equally confirmed that Funk always turned against the pillage of the occupied territories. He fought against the purchases in the black markets, he was against abolishing the foreign exchange regulations in connection with Holland, by which measure the German purchases in Holland were to be facilitated, he organized export to Greece from Germany and from the Eastern European states and even sent gold there (compare testimony of Dr. Neubacher). He repeatedly rose against overburdening the occupied territories financially, especially in 1942 and 1944 against raising the occupation costs in France. He defended the currency of the occupied countries against repeating attempts of devaluation. In the case of Denmark he achieved, even in spite of all opposition, a revalorization. Furthermore Funk fought an arbitrary stabilization of exchange on the occasion of currency regulations in occupied countries. Germany's clearing debt was always recognized by Funk as legitimate commercial debt also with regard to the occupied countries. This is shown especially by his proposal to commercialize this clearing debt by a loan by Germany issued for subscription in all European countries. Funk was opposed to too strong and compulsory an employment of foreign labor in Germany.

This was also testified by the defendant Sauckel at his interrogation here. All these facts favorably affecting the occupied countries were confirmed by the witnesses Hayler, Landfried, Puhl, Neubacher, and Seyss-Inquart.

According to these statements Funk always strove to keep order in the economic and social life of the occupied territories and protect them from shocks and disturbances. He always was opposed and disinclined to radical and arbitrary measures. He rather was in favor of agreements and compromises. Even during the war Funk always thought of peace. This was stated by the witnesses Landfried and Hayler and they added that Funk was repeatedly reproached for his attitude by the leading state and party offices. Also the defendant Speer testified at his interrogation that Funk, during the war, had occupied too many workers in the consumer goods economy and that this was a reason that Funk had to give up the management of the consumer goods production in 1943.

That Funk the same as Speer has revolted against the horrible "scorched earth" policy has been proved to the Court beside by Speer himself also by the witness Hayler on 7 May 1946. This witness declared that he never saw Funk so upset as in that moment when he was informed of this order for destruction. Funk gave directions, as Hayler had testified, as Reichswirtschaftsminister (Minister for Reich economy) as well as Reichsbankpraesident (President of the Reichbank) to protect the warehouses from the ordered destruction and to assure the supply of commodities necessary for the life of the population, also the currency transactions in the territories which were abandoned.

Funk's economic political goal, one may, indeed, say the contents of his lifework was a European economic community on the basis of just and natural balance of interests of the sovereign countries. Relentlessly even during the war he strove to reach this goal, although the elementary war necessities and the developments brought on by the war naturally hindered these efforts everywhere. The economic Europe, as Funk saw and endeavored to see it, was impressively represented by him in some major economic-political speeches. Extracts from some of these speeches, often also recognized in neutral and enemy countries, are contained in Document Book Funk 9, 10, and 11.

When reviewing the acts of the defendant his whole personality naturally plays a role if the motives from which this defendant acted are to be ascertained. The German people never looked upon Funk, that is as far as he was known, as a Party man who would be capable of participating in brutal outrages, violence, and terror or to amass fortunes at the cost of others. He rather shared his preference for art and literature with his friend Baldur von Schirach. Originally he wanted to become a musician and in later times he much rather saw in his house poets and artists than the men from the Party and the State. In professional circles he was known and considered as an economist, as a man with an extensive theoretical and historical knowledge who rose from journalism and was a brilliant stylist. He had an economically secure position as chief editor with the distinguished Berliner Boersen Zeitung so that he deprived himself financially when he accepted the office of press chief in the Reich Cabinet at the beginning of 1933 after Hitler's assumption of power. Therefore he was not one of those desperadoes who had to be glad to get into a well paid position through Hitler. On the contrary, he brought a financial sacrifice when he took over the state office offered to him and therefore it seems entirely credible that he did this out of patriotism, a sense of duty toward his people, to put himself at the service of the country during hard times of distress. To judge the personality and character of defendant Funk it is further of some importance that he never held or strove toward any rank in the Party. Other people who took over high state offices in the Third Reich were, for example, bestowed with the title of a SS-Gruppenfuehrer or given the rank of a SA-Obergruppenfuehrer. Funk on the contrary was from 1931 until the end of the Third Reich only a plain Party member, although he took pains for a scrupulous management of his state offices he endeavored no honors in the Party whatsoever. The only thing the defendant Funk was reproached on in this connection was the fact that he accepted an endowment in 1940 on his 50th birthday. That in itself of course was no punishable act but was evidently valued by the Tribunal as a moral charge against the defendant. Therefore we shall define our position with regard to this briefly. We remember how this endowment came about: The president and board of the Reich Chamber of Economy (Reichswirtschaftkammer), that is the highest representatives of German economic life, presented him on his 50th birthday with a farm of 55 hectars in Upper Bavaria. This estate, of course, existed for the time being only on the paper of the presentation document and had to be erected first. This presentation was expressly approved by the Head of State, Adolf Hitler, therefore not made secretly to the Reich Minister of Economy but in all official form without anything being suppressed or concealed. The gift consequently turned out to be for Funk a fatal one, because the construction of the building was much more expensive than was expected and because Funk had to pay a very high gift tax. Funk, who until then never had any debts and always lived in regulated conditions, came now because of this "donation" of an estate into debts; Goering, who heard about this, helped Funk out with a generous sum. When Hitler heard through Minister Lammers of Funk's financial difficulties, he had transferred to him as endowment, the cash necessary for the arrangement of his economic affairs. With that Funk was able to pay his taxes and his debts. The rest was used by Funk to donate to two public establishments, one for the dependents of the officials of the Reichsbank killed in action, the other for the personnel of the Ministry of Economy for the same purpose. The estate too was to be a donation some day. Thus Funk demonstrated that he had tact also in this point. Even though such an endowment cannot be legally disputed he felt that it is more correct to distance oneself from such endowments and to give them rather to public uses, as the gift could not possibly be turned down flatly considering it came from the head of the state. Henceforth I wish to turn toward the criminal responsibility of the defendant Funk on the individual points of accusation.

Support of the seizure of power by the Party
(Party activity 1931/32)

The defendant Funk is supposed to have promoted the seizure of power by the conspirators. This point of the indictment deals with the activity of the defendant Funk from the time when he joined the party in June 1931 until the seizure of power on 30 January 1933. The indictment maintains that Funk through interceding for the Party during that time had expedited the seizure of power by the National Socialists. This is correct. The defendant Funk himself during his interrogation on 4 May declared and explained in detail that he considered the seizure of the ruling power by the National Socialists the only possibility for the deliverance of the German people from the grave, intellectual, economical, and social distress of that time. The economic program of the Party was, in his opinion, vague and mainly designated for propaganda. He himself wanted to bring to bear his own economic principles in order to work through the Party for the benefit of the German people. Funk described this viewpoint to the court in detail during his examination. It is based on the idea of private property which is inseparable from the perception of the differentiation of human efficiency. Funk demanded the acknowledgment of private initiative and of the responsibility of the creative entrepreneur, free competition, and a balancing of social contrasts. He aimed at the elimination of party and class warfare, at a strong government with full authority and responsibility, and at a uniform political will of the people. Through his conversations with Adolf Hitler and with other party leaders he became convinced that the Party positively recognized these principles and ideas of his. In Funk's opinion he cannot be blamed for his support of the Party in its struggle for power. Funk believes especially that the discussions in this trial furnished absolute proof that the Party came to power absolutely legally. But even the way and means by which Funk assisted the Party cannot in his conviction be condemned. The role thereby, however, which the prosecution attributes to him does not correspond with the facts. Funk's activity is in part considerably overestimated in its importance, partly also is there an incorrect opinion about it.

The evidence of the prosecution consists mainly of references and extracts of reference books and especially of a book by Dr. Paul Oestreich: "Walter Funk, a life dedicated to economics" which was presented in evidence to the Tribunal under 3505–PS USA Exhibit 653. The core of this evidence is an "Economic Reconstruction Program" of the defendant Funk, printed on page 81 of this book which the prosecution calls "the official party declaration concerning the economic field" and "the economic bible for the party organization." This "Economic Reconstruction Program" forms the basis for the wrong accusation of Funk, on page 3 of the trial brief, that the defendant Funk assisted "in the formulating of the program which was publicly proclaimed by the Nazi Party and by Hitler." This "Economic Reconstruction Program" which during the testimony of the defendant Funk was read word for word (pages 8902 and 8903 of the official transcript) did indeed contain nothing extraordinary or even revolutionary nor really anything which was in any way characteristic for the National Socialist ideology. The program points to the necessity of providing work, of creating productive credits without inflationary consequences; to the necessity of balancing the public finances; further to the need for protective measures for the agriculture as well as for the urban real estate and for a rearrangement of the economic relations with foreign countries. It is a program of which Funk in his testimony quite correctly said that any liberal or democratic party and government could advocate. The defendant Funk only regrets that the party did not fully subscribe to these principles. Due to his economic viewpoint Funk later on had constant difficulties and differences with different party offices, especially with the German Labor Front, the Party Chancery, with Himmler, and with most of the district leaders (Gauleiter). This was also confirmed by the witness Dr. Landfried, who in his questionnaire submitted as Funk Exhibit 16, described these differences of Funk with the Party in detail. Funk had a reputation in the party predominantly as a liberal and as an outsider. During that time, that is essentially in 1932, he established relations between Hitler and some leading personalities of the German economy. He also worked for an understanding of the National Socialist ideas and for the support of the Party by the economy. By virtue of this activity he was described as Hitler's economic adviser. But this was not a party office, not a party title.

In Document EC–440, USA Exhibit 874, submitted by the American prosecution in the cross-examination of the defendant Funk, Funk states that the later Under Secretary Keppler was considered the economic adviser of the Fuehrer for many years before him (Funk). Funk wanted to show by this reference that the designation "Economic adviser of the Fuehrer" was given by the public to other persons also.

It was only for a very short period that Funk was commissioned with Party tasks during that time. This activity never gained any considerable importance which follows from the fact that with the assumption of power the party activity of Funk ceased completely. In the other sectors, such as Food and Agriculture, Finances, etc., the Party incumbents who entered the Civil Service as a Minister, Under Secretary, etc., retained their Party offices which generally even gained in importance. The elimination of the defendant Funk from every party office at the moment of the assumption of power shows clearly that the Party leaders did not especially care for the party activity of Funk.

In the cross-examination of the defendant Funk the Soviet Russian prosecution showed him an article which had appeared in the magazine "Das Reich" (18 August 1940) on the occasion of Funk's 50th birthday (USSR 450). In this birthday article the author, an economist by the name of Dr. Herle, emphasizes that Funk "as intermediary between Party and Economy had become a pace maker for a new spiritual attitude of the German entrepreneur."

In this respect it can be said: Funk never denied that he regarded it his task to find a synthesis for an economy which on the one hand has an obligation toward state and community, but on the other hand is based on private ownership and private initiative and responsibility. Funk always recognized the political aims and ideals of National Socialism.

The German people in its majority had embraced these goals and ideologies as was proven by several plebiscites. And Funk could not suspect that all these good intentions and ideal aims so often emphasized by Hitler, with which National Socialism began its reign, would later sink in the blood and smoke of war and in an inconceivable inadequacy and inhumanity. Funk testified on the stand expressly that he considered the authoritative form of government, the strong state, a responsible cabinet, the social community, and a socially minded economy a prerequisite for a removal of the then grave intellectual and economic crisis of the German people. He always clearly emphasized the primacy of politics before the primacy of the economy. To-day, after the terrible collapse of the National Socialistic state these things are indeed regarded differently. This goes for Funk, too.

As press chief of the Reich Government, on 30 January 1933, he took up the state office of a Ministerial director in the Reich Chancery. The direction of the press policies however passed already after 1½ months into the hands of Dr. Goebbels when the latter became Reichsminister for Public Enlightenment and Propaganda, and the press department of the Reich Government, which Funk should have had directed up to now, was merged into the newly established Ministry for Propaganda. Only for the time being he retained the personal news report to the Reich President v. Hindenburg and to the Reich Chancellor Adolf Hitler, until the death of Hindenburg. Then this activity stopped altogether also. The office of the Press Chief of the Reich Government existed practically only on paper. This was expressly confirmed also by the defendant Fritzsche upon his examination as a witness on 28 June.

Consolidation of Control of Government and Party

Persecution of the Jews of liberal professions (Reich Ministry of propaganda)

As to defendant's activity in the Reich Ministry of propaganda, the prosecution charges him as follows:

"By means of such an activity in the Ministry of Propaganda, the defendant Funk participated in establishing the power of the conspirators over Germany, and is particularly responsible for the persecution of 'political dissenters' and Jews, for the psychological preparation of the people for war, and for the weakening of the strength of and will for resistance of the victims selected by the conspirators."

Also in this point of the accusation, the guilt of the defendant Funk has been derived almost exclusively from the fact that he occupied the position of a secretary of state in the Ministry of Propaganda. The hearing of evidence, however, has shown that Funk had nothing to do with actual propaganda activity in his position as secretary of state. Funk did not deliver any speeches either through the radio or in public meetings. The press policy was directed by Dr. Goebbels, in person, ever since the ministry had been established. However, Funk took care, to a large extent, of the wishes and complaints of the journalists. He protected the press against trespassing by government offices and tried to secure for the press an individual look and an activity conscious of its responsibilities. This is expressed by the digest from the book written by Dr. Paul Oestreich: "Walther Funk, ein Leben fuer die Wirtschaft" (cf. 3505–PS, USA 653—Document book Funk 4b). Some of Funk's wordings from that period of his activity in the Ministry of Propaganda, as e.g. the sentence "the press is not a barrel-organ" and the further saying "the press should not be the scapegoat of the government" have become later all but household words.

As secretary of state, Funk had, on the whole, only organizational and economical tasks. He managed the financial side of the activity of the numerous organizations and institutes which were controlled by the Ministry of Propaganda, such as, particularly, the Reich broadcasting company, further the German Trade Publicity Council (Werberat der deutschen Wirtschaft), the state-owned film combines, the state-owned theaters and orchestras and the state-owned press agencies and newspapers. As to art, and according to his artistic tastes, he occupied himself with music and theater. In the direction of the Ministry of Propaganda, a complete separation between political tasks on the one hand and organizational and economical tasks on the other hand took place. This has been stated in unison by all witnesses examined on this point. Minister Dr. Goebbels in person directed the propaganda policy, exercising complete, absolute, and exclusive control. His assistants herein were, not his secretary of state Funk, but his old collaborators from the propaganda organization of the party, who for the most part were taken over by him in a personal union into the newly created Ministry of Propaganda. Funk, however, did not belong to the propaganda department of the party, neither before nor after the ministry was established. The assertion of Mr. Messersmith in his affidavit submitted under 1760–PS, according to which Goebbels had incorporated Funk into the party organization, is erroneous, and can obviously be attributed to the fact that Messersmith had, as an outsider, no insight into the division of work within the Ministry of Propaganda, and moreover, apparently identified readily the propaganda activity of the party with the propaganda of the state ministry. This has been confirmed by the questionnaire submitted by Messersmith, as asked for by the defendant Funk, on 7 May 1946. (Doc. Book Funk, Supplement 5.) This questionnaire shows that Messersmith cannot even state whether he has had a conversation with the defendant Funk a few times or only once, furthermore, that he does not remember any more what topic was discussed at that time, nor in what capacity Funk was present at this meeting. With such vague and unreliable statements of a witness nothing, of course, can be proved.

As a proof of the fact that Funk had nothing to do with the actual propaganda activity and—as the defendant Goering has asserted here as a witness—did not play any important part at all in comparison to Goebbels, I refer to the affidavit of the former Reichsleiter for the press, Max Amann, of April 17, 1946 (Doc. Book Walther Funk Exhibit 14). At first the prosecution has submitted an affidavit sworn by this witness, of 19 December 1945 (3501–PS) ; the statements contained therein have been, in the new affidavit of April 17, 1946, supplemented and corrected in essential points. In this new statement submitted to the prosecution and to the defense, the witness Amann gives evidence that also, according to his knowledge, Funk, as secretary of state in the Ministry of Propaganda, had nothing to do with the actual propaganda activity. For the rest, the witness confirms the statements of the defendant Funk, viz., that he (Amann) did not know in person the distribution of activities and the interior management of the ministry, and that his statements are exclusively based on informations by other persons. The witness Heinz Kallus, on the other hand, worked for some years as an official of the Ministry of Propaganda. Kallus, too, confirms under oath in the answers in the questionnaire addressed to him (Exhibit Funk 19), that on the whole Funk was engaged in administration and financial questions. And the same was testified by the defendant Hans Fritzsche during his examination as a witness before this Tribunal on June 27 and 28.

In the trial brief of the defendant Funk (p. 9, 3566–PS) the prosecution submitted the notes of a SS-Scharfuehrer Sigismund as evidence for the importance of the position which Funk is supposed to have held in the Ministry of Propaganda. An official of this ministry by the name of Weinbrenner is supposed to have declared to that SS-Scharfuehrer that it was impossible to know whom Minister Goebbels would entrust with the office of radio superintendent, as Goebbels took most of the important decisions only in agreement with Under Secretary Funk. Now Dr. Goebbels did not as a matter of course undertake the appointment to the leading post in broadcasting without getting in touch with Funk, the chairman of the administrative board of the Reich Broadcasting Corporation (Reichsrundfunkgesellschaft); this, however, does not prove anything concerning the nature and the significance of the activity of the defendant Funk nor of the aims he pursued thereby. After all, the prosecution has been able to submit but one single document bearing the signature of Funk as Under Secretary, viz., the fixing of a date for the coming into force of a decree for the execution of a law concerning the Reichskulturkammer of 9 November 1933 (3503–PS).

Among the persons for whom Funk interceded were not only Jewish editors, but also many prominent German artists, and the witness Kallus (cf. his questionnaire in the Doc. Book—Funk 18) mentions in this connection the Jewish proprietors of a big Berlin directory publishing firm whom Funk had given permission to carry on with their business against considerable resistance of the competent section of the ministry and of the German trade publicity council (Werberat der deutschen Wirtschaft). The witness Kallus stated further that, owing to this attitude toward the Jewish cultural workers, Funk was "suspect" to Dr. Goebbels and to the chief of the press section, Berndt, who was known to be particularly radical. Editor-in-chief Oeser explicitly states, as a witness, in his affidavit (Doc. Book, Funk 1) that he has made his statements voluntarily to prove the "human attitude" of the defendant Funk, and gives the names of eight Jewish editors of the "Frankfurter Zeitung" whom Funk had given permission to carry on with their profession. In this connection, Oeser further remarks: "He (Funk) herewith proved his human understanding. Indeed, I have never heard from him (Funk), in the course of our conversations, any inhuman utterances. Owing to his (Funk's) concessions, the endangered people obtained, in part repeatedly, the possibility to hope and to work anew with us and to prepare, without loss of income, their change of profession and their emigration." Oeser, a well-known economic journalist, who always kept completely aloof from the party, explicitly states that Funk without any doubt exposed himself by his attitude toward the Jews. Hereof the prosecution deduces a responsibility or, at any rate, a co-responsibility of the defendant Funk for the entire legislation for the control and coordination of the cultural professions (Kulturberufe).

This conclusion appears to be wrong; quite apart from the fact that the point in question is the fixing of a date for a decree concerning execution, therefore a purely formal act, it must be emphasized that this law was decided by the Reich Cabinet of which the defendant Funk at that time was not a member.

Funk stated in his examination that during the entire duration of his activity in the Ministry of Propaganda he hardly gave his signature more than three times representing Dr. Goebbels. For the rest, the defendant Fritzsche testified here as a witness, on June 28, 1946, that the position of Dr. Goebbel's long-time collaborator and personal adviser Hanke, who later on became Under Secretary and Gauleiter, corresponded far more to the usual position of an Under Secretary in the ministry than the one of the defendant Funk. It was Hanke, too, who maintained the liaison of Minister Goebbels with the section heads and advisers of the ministry, a task adhering otherwise to the Under Secretary in a ministry, but which was never entrusted to the defendant Funk, although he was an Under Secretary.

It is proven by the affidavit of the former editor-in-chief of the "Frankfurter Zeitung," Albert Oeser (Funk Exhibit 1), and of the attorney-at-law Dr. Karl Roosen (Funk Exhibit 2), as well as by the affidavits of the witness Heinz Kallus (Document Book Suppl. 18), that the defendant Funk, in his position as an Under Secretary of the Ministry of Propaganda, energetically undertook to help Jews and other persons who were oppressed and thwarted in their intellectual or artistic activities by the National Socialist legislation and cultural policy, and that he did this under heavy risks to his own position.

In the cross-examination of the defendant Funk the prosecution referred to an affidavit, produced by the prosecution, of an editor called Franz Wolf; this witness expressed (3954–PS) the opinion that Funk may well have given those exceptional permissions not out of human sentiments, but rather in order to maintain the high standard of the "Frankfurter Zeitung." By the way, the author of the affidavit was actually one of the Jewish editors who were given permission to further exercise their profession by Funk. The assumption of the witness Wolf is in direct contradiction to the positive statements of the witness Oeser. The defendant Funk too opposed this interpretation and has pointed out that at that time such considerations were of no importance to him. In later years, when the "Frankfurter Zeitung" was to disappear, he had, so he said, used his influence in order to ensure the further publishing out of material considerations too, as this newspaper was, as an economic paper, highly esteemed abroad and was the best commercial newspaper of the country. However, this does not alter the fact that Funk had, at a time, used his influence repeatedly and with success in favor of Oeser and his collaborators, for purely humanitarian reasons.

The witness Kallus finally declared in his questionnaire (p. 3 of Doc. Book Funk, supp. 4, No. 18) that he remembers several occasions where Funk made possible the emigration of Jewish people at tolerable conditions. Kallus confirms hereby the statements of the witness Luise Funk (Doc. Book Funk, exh. 3), according to which the defendant Funk has often received, in the years when he was under secretary of state in the Ministry of Propaganda, letters of thanks from Jews who had emigrated at that time from Germany and who thanked Funk for having given them facilities for liquidating their businesses and for having procured them permission to take along abroad considerable parts of their fortune. Evidence concerning this second part of the indictment has accordingly shown that Funk is guilty in the sense of this part of the indictment neither in his official capacity nor by his actions. He has helped, as far as it was within his power, many Jews and many individuals, who were endangered and hindered in their cultural work, out of their material and spiritual distress, although by doing so he jeopardized his own position.

Preparation of wars of aggression
(Point IV of the indictment)

Point IV of the indictment reproaches the defendant Funk with "having actively participated, while fully cognizant of the aggression plans of the conspirators, in the mobilization of German economy for the war of aggression." As proof of this assertion, the indictment points out at first that the Ministry of Economy (Wirtschaftsministerium) was "made part of the Four-Year-Plan by Goering" as High command of the German war economy and then put under Funk's command.

Further on, the indictment states that, by the law of defense of the Reich of 4 September 1938, Funk was, in his capacity of high "commissioner of economy," explicitly entrusted with the mobilization of German economy in time of war. The statement of the indictment that the Reich Ministry of Economy was made a part of the Four-Year-Plan before its transfer by Goering to Funk is quite correct. But the high command of the German economy was not exercised by the Reich Minister of Economy, Funk, but by the commissioner for the Four-Year-Plan exclusively, viz., the co-defendant Goering, whose instructions Funk had to follow.

Besides, the most important branches of production, as coal, iron, machines, motors, chemicals, and others, were managed by special general commissioners of the Four-Year-Plan, who were controlled directly by Goering and received their instructions from Goering, but not from Funk. The Reich ministry of economy was but the office which executed the directives of the Four-Year-Plan.

The defendant Funk, as a witness, has pointed out that some offices, as the Reich Office for Economic development (Reichsamt fuer wirtschaftlichen Ausbau) under Professor Krauch and the Reich Office for Soil Investigation (Reichsamt fuer Bodenforschung) under secretary of state Keppler, were only formally under the supervision of the Reich minister of economy, but did, in fact, function as autonomous institutions of the Four-Year-Plan.

Funk's position as Plenipotentiary for Economy was vigorously attacked from the beginning. During the cross-examination of the defendant Funk by the American prosecution a Document EC-255 was submitted, a letter of the Reich War Minister von Blomberg to the commissioner for the Four-Year-Plan Goering, dated 29 November 1937, wherein Blomberg proposes that the defendant Funk, who on 27 November 1937 had just been appointed Reich minister of economy should also be appointed general commissioner for war economy. However this was not done.

At first, Goering himself took over the Reich Ministry of economy and handed it over only in February 1938, after 3 months, to the defendant Funk. Then the high command of the armed forces, more especially the Wehrwirtschaftsstab (General Thomas), requested that the Plenipotentiary for War Economy should be bound, for the future, to follow the directives of the high command for all questions connected with the supplying of the armed forces (Doc. EC–270, USA Exhibit 840). In this letter the high command of the armed forces, Wehrwirtschaftsstab, claims a right to direct the general commissioner for war economy on nearly everyone of his fields of activity.

The defendant Funk tried by a conversation with Reich Marshal Goering and a letter to Reich Minister Dr. Lammers to clarify his position as general commissioner for war economy, and asked to be placed, as Plenipotentiary for War Economy, under direct command of Hitler, and not to be compelled to obey the directives of the command of the armed forces. Goering and Lammers agreed with Funk's opinion. But this has nothing to do with Funk's being put under command of Goering, as all other supreme Reich offices and ministers which were put under Hitler's direct command were required to follow the directives of the commissioner for the Four-Year-Plan.

It is, however, remarkable that according to the act for the Reich defense of September 4, 1938, the defendant Funk did not become Plenipotentiary General for War Economy, but Plenipotentiary for Economy (without war), and that this act explicitly stated that Funk had to obey the requests of the supreme command of the armed forces. Accordingly, the supreme command of the armed forces has at last carried through its wish.

But also the individual Economic departments, which according to the Reich Defense Law were under the direction of the Plenipotentiary General for the Economy for his special tasks, were not willing to recognize him. During the cross-examination of the defendant Funk an interrogation of the former Under Secretary Dr. Hans Posse, Funk's deputy as Plenipotentiary General for economics (3894–PS, USA piece of conviction 843) was produced in which the latter declared that the Plenipotentiary General for the Economy "in reality never entered into function!" The ministers and under secretaries of the individual economic departments (Finance, Agriculture, Transportation, etc.) did not, according to the statement of Posse, wish to be placed under Funk's control and protested against it. Posse then speaks of the difference concerning the Four-Year-Plan. He calls these conflicts "the struggle for power," whereby in this connection nothing else is meant but the authority to make decisions with regard to the other economic departments. This was not a difference between Goering and Funk, this is wrong, because it was evident that Funk even as a Plenipotentiary General for the Economy was reporting to Goering. Actually this was a quarrel of the under secretaries. The individual economic departments declared they reported to the Plenipotentiary for the Four-Year-Plan and refused to recognize the right of the Plenipotentiary General for the Economy to give them directives, because he himself was under the direction of the Four-Year-Plan. The under secretaries of the Four-Year-Plan supported the departments in this interpretation. This lack of clearness and the over-lapping of competencies were the reasons why the authority to issue directives passed already a few months after the outbreak of the war from the Plenipotentiary General for the Economy also formally into the hands of the Plenipotentiary for the Four-Year Plan.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

But nowhere in the material presented by the prosecution is to be found a single indication for the fact that defendant Funk knew anything about political and military conversations in which a planned war, in particular a war of aggression of Germany, was discussed. Funk was never invited to any conversations of this kind. He was, in particular, not present at the conversation at Goering's on 14 October 1938, which was treated exhaustively by the prosecution on page 24 of the Trial-brief (1301–PS.) According to the prosecution, Goering referred at this meeting to an order of Hitler to increase armament unusually, especially with regard to arms of attack. The prosecutor declared (p. 2447 of the German transcript) at the session of 11 January 1946 that Goering at that meeting had addressed words to Funk, "which were the words of a man already at war." However, by several documents (Doc. Book 5, 6, 7, and 8) it is unequivocally proved that defendant Funk was not present at that meeting, as he was in Sofia at that time in order to conduct economical negotiations with Bulgaria. This exhibit of the prosecution, which clearly was meant to be a main exhibit, is thereby invalidated.

When Funk wrote his letter, dated 25 August 1939, to Hitler, the German and Polish Armies were already facing one another completely mobilized. Therefore he was compelled to act that way and could, at that moment, no longer retract any preparations. Compare thereto the interrogatory Kallus item 5 (Doc. Book Funk 18).

Defendant Funk declared here on the witness stand: "It was naturally my duty (as a Plenipotentiary General for the Economy) to do all I could to prevent, in case of war, shocks in the civilian sector of economy and it was further my duty as a president of the Reichsbank to reinforce, as much as possible, the supply of gold and foreign currency in the Reichsbank. That was necessary on account of the general political tension at the time and it would also have been necessary if war had been avoided and only economic sanctions had been brought to bear which, in view of the tension of the political situation at the time, were to be expected. And it was just as well my duty as Reich Minister for the Economy to do all I could to increase the production." (P. 8931 of the German transcript.) To this subject witness Puhl states in his answers in the questionnaire of 1 May (Funk Exhibit 17) that the position of the Reichsbank in the last seven months of Funk's presidency before the outbreak of the war had not been essentially reinforced and that the exchange of foreign assets for gold, since January 1939, had only been executed in a modest way. The providential gold and foreign currency policy of the Reichsbank corresponded to customary practice.

These statements of Puhl are important for the correct appreciation of Funk's references to the changing of foreign assets into gold in his letter to Hitler from 25 August 1939 (699–PS, GB Exhibit 49). The transactions were, in any case at the time when

Funk was president of the Reichsbank, hardly longer of any importance. Funk's excessive way of expressing himself in this letter to Hitler makes the contents appear more important than they actually were. Funk explained these facts at his interrogation by the fact that this letter was a letter of thanks and that in those days every German was under highest tension on account of the political occurrences that were getting all Europe very much excited and that at this moment of danger of war for his country, he wanted to let his chancellor know that he (Funk) too had done his duty. This was the first and it remained the only time that Funk as Plenipotentiary for Economy got active and busy and, somewhat sad, the defendant continues: "Every man wants to be somebody once in his life."

Here I must insert something which is based upon a protocol which the defendant submitted only after the end of the hearing of evidence. It is Document 3787–PS. That is the minutes of the second meeting of the Reich Defense Council on 23 June 1939.

During that meeting of the Reich Defense Council, which occurred about two months before the beginning of the War, Funk, as General Plenipotentiary for Economy, participated. However, judging from the way it was proposed, the minutes leave no doubt whatever that we are here concerned with general, and therefore more theoretical, preparations for the event of some war or other.

Furthermore, to appreciate this document, it must not be overlooked that during the war which broke out three months later, the tasks of the defendant Funk in the sector of distributing labor were transferred entirely to the Four-Year-Plan, since the General Plenipotentiary for Economy, in his chief functions was, soon after the beginning of the war, completely and formally abolished, as I have previously shown.

The defendant Funk has explicitly stated at his interrogation before the Tribunal that he, right to the end, did not believe war would come and why he did not believe it, on the contrary that he counted on the Polish conflict being settled by diplomatic means. The correctness of this statement is also confirmed by the witnesses Landfried, Posse, and Puhl in answering of the questionnaires presented to the court as exhibit by the Defense or by the Prosecution (Funk Exhibit 16 and 17 and 3894–PS). The danger of war with Russia came to Funk's knowledge for the first time when he heard of Rosenberg having been appointed Delegate for the unified treatment of East-European problems in April 1941.

At that time the defendant Funk was given the same explanations by Lammers and Rosenberg as were expressed in general before the Tribunal here by witnesses heard on this question. He was told the reason for the preparations for war against Soviet Russia was that the Soviet Russians were massing strong troops along the entire border, that they had invaded Bessarabia and that Molotov in his discussions regarding the territory of the Baltic Sea and the Balkan had made demands which Germany could not fulfill.

Since Rosenberg stated that the commission given by Hitler included also economic measures, Funk placed Ministerialdirector Dr. Schlotterer as liaison-man at Rosenberg's disposal. Later Schlotterer took over the direction of the economic section of the ministry Rosenberg and he also joined the Economic-Operations-Staff East (Wirtschaftsfuehrungsstab) of the Four-Year-Plan. The Ministry for Economy itself had practically nothing to do with the economic questions of the occupied East and concerned itself merely with questions which had bearings on internal German economy. The Ministry for Economy had no authority whatever for decisions in the occupied Eastern territories.

During the cross-examination the defendant Funk, on the subject "Preparations of war against Russia," was shown an extract from an interrogation of 19 October 1945 (3952–PS, USA Exhibit 875). In this interrogation Funk stated that the defendant Hess had asked him at the end of April 1941 if he had heard anything about an impending war against Russia? Funk replied: "I have not heard anything definite, but it seems as if there is some talk along that line." The explanation for this conversation at the end of April 1941 between two who were not initiated is most likely that on this date Funk did not yet exactly know the reason for Rosenberg's commission, and was going only on presumptions and by rumors.

On 28 May 1941 Rosenberg had a meeting with Funk (Doc. 1031–PS). In this meeting the question was discussed how the money problem in the East was to be regulated, if a war against Russia should break out and if those territories should be occupied by our forces. It certainly is a most natural procedure that in view of an imminent war the authorities responsible for money matters should discuss the question of how, in the case of occupation of enemy territory, money matters should be handled there! Funk was against any regulation which might cause speculations and called the suggested rate of exchange for mark and ruble an arbitrary act. He joined Rosenberg in his conception that the Russian territory should have its own national currency as soon as conditions would permit it. For the rest he demanded further investigation of these problems, especially since the matter could not be determined in advance. So here too Funk approached matters with his characteristic precaution and endeavored to find a solution which would bring about stable conditions.

If it was mentioned in this discussion (but not by Funk) that ruble bills had to be printed in order to meet the most urgent demands for currency, then Funk saw neither anything unusual nor criminal therein. If a country has been depleted of its currency, then a new currency simply must be created by that power which is responsible for the maintenance of a stable monetary system. Who produced the banknotes was entirely unimportant. Important for him was by whom the banknotes were issued and in what quantity.

Moreover the production of a new banknote requires months of preparation, so that the execution of such a plan could have been intended only for a much later date. Actually war broke out already a few weeks after this discussion. The defendant Funk knew that war with Russia was imminent. That Germany had been preparing for such a war for a long time was as little known to him as the fact that Germany would attack, and thus wage a preventive war.

Funk was informed neither on the march into Austria nor about the negotiations on Sudetenland (in September and October 1939 he was not in Germany at all) nor on the seizure of the remainder of Czechoslovakia. About Poland he knew that the conflict was acute. Likewise about Russia. But in both cases only a short time before the actual outbreak of war. Regarding wars with other countries Funk received no information whatsoever before the opening of hostilities.

From all the above-mentioned facts it can be clearly seen that Funk knew nothing of Hitler's intentions in the line of foreign policy, and had no knowledge whatsoever of the fact that Hitler was making any kind of plans for aggressive war. Truly Funk concerned himself in the summer of 1939 especially with the conversion of German economy from a peace- to a war-time basis. But to prepare the German people for a defensive war and to take economic measures necessary for a defensive war, Funk considered it not only as his right but as his duty as official of the Reich.

Now the prosecution believes that it can get around all these deliberations by calling the Reichsregierung or the National-Socialist Party or preferably all of the German people a criminal organization, who conspired against other nations and whose sole task had been to plan and wage wars of aggression, to subjugate and enslave foreign nations, to plunder and to germanize other countries. This deduction is erroneous because only Hitler himself and a few of those men closest to him, of the type of a Goebbels, Himmler, and Bormann, devised and executed these criminal plans. According to the evidence heard it cannot be doubted that even the highest officials of the state and of the Armed Forces were not initiated into these plans, but rather that these plans were concealed from them by a cunning system of secrecy. A comparison with secret societies, which in other countries banded together in criminal organizations, as for example the Ku-Klux-Klan in America, cannot be made, also for another reason.

The Ku-Klux-Klan for instance was from the start organized as a secret society with the purpose of terrorizing and committing crimes. In 1871, after scarcely 6 years of existence, it was, by a special law, the Ku-Klux-Klan Act, expressly forbidden by the North American Government. At that time the Government even declared martial law against it and fought it with every possible means. It was an organization with which the Government and the parliament of the United States never had any dealings at all. A man like Funk would, of course, never have joined such a secret society, a criminal organization against which the government was fighting. However the National-Socialist Party in Germany never was a secret organization, but was a party recognized by the government and considered lawful; in a special Reich law expression was given to the unity between this party and the state. The leader of this party was at the same time from 1934 the elected head of the Reich and this head of the state and his government have from 1933 on constantly been officially recognized as a government by the entire world. It was just because of this international recognition of Hitler by all the foreign countries, a recognition which was still maintained even during the second world-war, that Funk and millions of other Germans never doubted the lawfulness of the government and that such doubts, if they ever tried to enter his mind, were nipped in the bud, and millions of German officials and German soldiers assumed exactly like Funk that they were only doing their duty in not denying this head of the state the recognition which all the countries of the world gave him.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

Funk has never denied, as has already been mentioned, that in his plans and regulations he naturally also thought of the possibility of wars which Germany perhaps some day might have to wage, exactly as every general staff as a matter of duty has to give consideration to such possibilities. At that time there existed for Funk every reason thereto; for the world situation since the first world-war was so tense and the conflicting interests of the individual nations appeared often insurmountable to such an extent that every statesman had to make the necessary preparations for war if he did not want to be accused of negligence or of betrayal of the interests of his own people. Therefore such preparatory activity in itself had no criminal significance, and Funk does not doubt at all that the ministers of economics and the bank presidents of other countries also during those years made preparations similar to his for the event of war, and had to make them. For the question of legal punishment in Funk's case it is not essential whether or not he, for his part, ordered such preparations, but exclusively whether or not he knew that Hitler was planning aggressive wars and that he intended to wage such aggressive wars in violation of existing treaties and under disregard of international law. But Funk, as he declared under oath, did not know this and did not go on such assumptions either. Due to Hitler's constant affirmations of peace such possibilities never entered his mind. Today of course we know, on the basis of the actual events of the time that followed and on the basis of the facts established by this proceedings, that those peace assertions of Hitler's, which were on his lips yet when he committed suicide, were in reality only lies and deception. But, at that time, Funk took these peace affirmations of Hitler's to be the absolute truth. It never entered Funk's mind at that time that he and the whole German nation could be deceived by Hitler; but rather did Funk trust Hitler's words exactly as did the whole world, and thus became a victim of that deception as did the whole world. If foreign statesmen and generals are not reproached for having believed Hitler's peace affirmations, although they surely must have been much better informed about Germany's rearmament than Funk, then one cannot now because of the faith he had in the head of the state accuse him of a crime.

Occupied Territories—Forced Labor

The evidence which the prosecution brought against Funk on the subject of "Forced Labor," or "Slave-Labor-Program," (as the prosecution calls it) is only scanty. In the main he is held responsible for the forcible employment of foreign man-power on the grounds that, since autumn 1943, he was a member of the "Central Planning." He attended a session of Central Planning Board for the first time on 22 November 1943 and later only very rarely, as was stated by the defendant Speer as witness and as is shown by the minutes of this board. With questions of direction of labor Funk never concerned himself at all. He was in principle opposed to drawing too many laborers, especially by force, out of the occupied territories because this disturbed the economic life and the social order of these territories. Sauckel, Landfried, and Hayler have affirmed this, and the same is disclosed by Funk's personal remarks in the here frequently mentioned conference with Lammers on 11 July 1944 (Doc. 3819–PS), where, for example, Funk expressed himself against "ruthless police raids."

When Funk sent representatives to Central Planning, he did it only for the purpose that they should see to it that the necessary raw materials were assigned to the industries of the consumer's goods and for export, but never on account of the questions of foreign labor. If the prosecution confronted the witness Hayler during a cross-examination on 7 May 1946 (p. 9070 of the German transcript) with a statement by Funk from the preliminary interrogation of 22 October 1945 (3544–PS), wherein Funk declared that he had "not racked his brain" over these labor problems, then it must also be stated that in the next sentence of this protocol, so to speak under the same breath, Funk declared that he had always done his utmost to prevent the hauling away of laborers from their homeland, e. g. France. This second sentence, although it was not quoted, is important because it also reveals Funk's declining attitude against the forcible measures used in connection with direction of labor. Now it has been deposed by the defendant Speer in the session of the Tribunal on 20 June that Central Planning made no plans at all for direction of labor. Only occasionally discussions on direction of labor questions took place here. Not the stenographic notes introduced here, but rather the protocols, contain the actual results of the negotiations and the decisions of the Central Planning. But these protocols have not been introduced by the prosecution. As has been proved, Funk, who attended the sessions of Central Planning only a few times, never received the stenographic notes, but only the protocols for his information. Previous to the time when Speer made the decisions regarding war production, and before Sauckel became Plenipotentiary General for Direction of Labor, i.e., before 1942, were questions of procurement of manpower for production discussed in the Four-Year-Plan. Later too, demands for the labor required were, in the main, as Speer has testified, presented in direct negotiations between the industries and the offices for direction of labor. While the production of the Reich-Ministry for Economy, according to the instructions of the Four-Year-Plan, still was under the care of Funk, these directions of labor questions were not dealt with by the Reich-Ministry for Economy but rather by the Plenipotentiaries-General of the Four-Year-Plan, appointed for the various branches of industry negotiated directly with the Plenipotentiary-General for Direction of Labor or with his competent offices. Speer rectified this in regard to the document Sauckel Exhibit 12 and likewise the fact that several branches of industry such as the construction department, which do not belong there, were in this document cited as coming under the competency of the Reich-Minister of Economy.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

Finally it must be concluded that Funk, at the time he joined the Central Planning, no longer had any tasks to fulfill in the production and consequently could no longer demand workers for such.

[At this point material was omitted voluntarily by Defense Counsel.—Ed.]

Summarily it must be said that the evidence submitted has proved beyond doubt that the defendant Funk always opposed the exploitation of occupied territories by various measures, and that by the very fact that he succeeded in preventing the devaluation of currency in occupied countries they were protected from harm, the extent of which cannot be evaluated individually.

Elimination of Jews from Economic Life
(Point 3 of the Trial Brief)

In view of the time at my disposal I cannot afford to go into further details with respect to accusations raised against Funk by the Indictment but I shall refer to statements given by Funk with respect hereto; I must first, however, deal more fully with a problem, which to me seems the most important in the whole of the accusation against Funk, namely the reproach that he participated in any manner in the persecution of the Jews. This question appears to me to be the most decisive for judging of defendant Funk before this Tribunal.

Of course it was never asserted in Germany that Funk belonged to those fanatic anti-Semites who participated in or approved of the pogroms against the Jews or who derived benefit from these actions; Funk always declined that sort of thing. The explanation for this fact is to be found not only in his natural disposition and the surroundings in which he grew up but also in his decades of journalistic activity mostly in that part of the press which dealt with economic policies and, consequently, kept him in continuous touch with the valuable circle of Jews in economic life. Experts know and speak highly about it even today that Funk, at that time already, showed an attitude that was free of all anti-Semitism and appeared to be far more friendly toward the Jews than hostile.

It is somehow tragic that in spite of this Funk's name in this trial has been repeatedly connected with the decree of November 1938 by which the elimination of Jews from economic life was carried out. Whether he liked it or not, all questions which concerned the treatment of Jews in the economic life of Germany were under the jurisdiction of his departments as Minister for Economy. As an official it was his duty to issue the necessary decrees for execution.

This must surely have been very difficult especially for Funk in view of his tolerant attitude. He had, at that time, been a state official of the Reich Propaganda Ministry and the Ministry for Economy for 8 years already, and yet the prosecution could not ascertain a single case during that time in which Funk had shown an anti-Semitic attitude, where he had incited people toward the Jews. It could not cite a single instance when he would have approved of or preached violence, terror, or injustice. On the contrary, we know, from statements of various witnesses, that Funk interceded on behalf of Jewish fellow-citizens in those years time and again, that he was concerned about them, and in their interests sought to alleviate hardships, to prevent encroachments on their rights and to rescue the existence of human beings, even if they were Jews or political opponents.

It is therefore not too surprising that this man of rich experience in the economic field, this man of far-reaching knowledge with his outspoken tolerant views was most painfully affected when on 10 November 1938 he had to witness the destruction of Jewish homes and shops in Berlin. One incoming report upon another confirmed the fact that Goebbels and his clique exploited the excitement of the populace over the assassination by a Jew of a German diplomat in Paris, organized such programs throughout Germany, and that the outrages led not only to the destruction of Jewish property but also to the murder of many Jews and to the persecution of many thousands of innocent fellow-citizens.

The affidavit of his Ministerialrat Kallus (Doc. Book Funk 15) of 9 December 1945 and Frau Luise Funk's statement made in place of oath of 5 November 1945 (Doc. Book Funk 3) prove clearly, that Funk condemned such excesses to the utmost and that he called them swinish in the face of Minister Dr. Goebbels, in great excitement, and in the event of a repetition of such he threatened to resign his office. He had, at that time already, told the almighty Goebbels into his face that one had to be ashamed of being a German.

All this expressed the just indignation of a man who for decades had exerted himself for moderation toward the Jews and political opponents and had thus earned many a letter of appreciation, a man who had fought for years to prevent any terror, to raise the standard of German economic life and who now, in a single night, saw all his efforts frustrated by the brutal fanaticism of a Dr. Goebbels.

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Funk himself during his interrogation clearly described how, from entering upon his office as a Minister of the Economy from February 1938, he was being pressed continuously by Dr. Goebbels and Dr. Ley to eliminate the Jews also from the economic life; the witness Dr. Hayler stated here that Himmler also reproached Funk of this; Funk himself as a witness stated how in those years repeated difficulties arose with the workers stirred up by propaganda who sometimes no longer wanted to work with Jewish managers or did not dare to do so, and how, under the pressure of these conditions, it occurred that numerous Jewish business owners sold their business, and quite often at ruinous prices, to people who to the Minister of Economy Funk appeared to be entirely unfit for acquiring and managing of such businesses. Time and again Funk tried to oppose this irresistible condition; he strove continually to slow down, at least, this process of aryanization, to provide for a suitable and just settlement for the Jewish business owners, and to make possible their emigration from Germany together with allowing them to take along their belongings. But day after day Funk came to recognize more and more that he was too weak to stop this movement and that the radical elements around Dr. Goebbels and Dr. Ley increasingly won the upper hand and in so doing unfortunately even were able to lean on Hitler's authority. The latter in the course of time was won more and more for the radical treatment of the Jewish question by a few irresponsible advisers who today do not sit in the prisoners dock.

Into this fight between Funk and other considerate people on one side and Goebbels and Ley on the other side, the events of 9 November 1938 burst which, as Dr. Goebbels himself later admitted toward Fritzsche, were aimed directly against the person of the defendant Funk, who thereby was to be confronted with accomplished facts. And through this action of November 1938 Dr. Goebbels actually reached his goal as the witness Dr. Landfried testified. Goebbels was in the future able to refer to Hitler's own order that the Jews be completely excluded from the German economic life, although Funk, as the minister concerned, repeatedly pointed to the relations with foreign countries from which the German Reich and its economy were dependent.

Goering, in his capacity as a plenipotentiary of the Four-Year-Plan, gave the orders necessary for carrying out this program, namely upon Hitler's direct orders. Funk never had any doubt that thereat Goering also was to a certain degree only a figurehead because he always knew Goering as the man who just in the Jewish question had previously rejected extreme radicalism. This conception of Funk was shared by wide circles of the German people and it proved to be correct in the fateful Goering meeting on 12 November 1938 (1816–PS).

At a preceding meeting, Goering sharply condemned the terror acts which had occurred and declared to the Gauleiters present that he would make responsible every Gauleiter personally for the acts of violence committed in his district. But what was the good of that? Goebbels, in the course of the second meeting, the minutes of which have been submitted to the Tribunal (1816–PS), succeeded after all with his radical demands, and Funk, from the result of this meeting, finally had to come to the conclusion that the complete elimination of the Jews from German economic life could simply not be delayed any longer because the authoritative circles had become far too fanatic. It became evident to Funk that legal decisions would now have to be taken if the Jews were to be protected from further acts of terror, plunder, and violence and if they were to get at least some proper compensation. Funk, during this Goering meeting of 12 November 1938, strove along that line time and again. Due to the efforts made by the defendant Funk supported by Goering, the Jewish businesses first were reopened, the whole procedure was taken out of the arbitrary hands of local agencies and put on a legal basis all through Germany, and finally, this liquidation was spread over a certain period of time in order to gain time for carrying out this action. If the minutes of the Goering meeting of 12 November 1938 are read then one will over and over again be able to find, in spite of its incorrect and incomplete formulation, distinct clues which prove Funk's moderating influence, namely his urging, mentioned in the minutes repeatedly, to reopen the Jewish stores, and his proposal to let the Jews retain at least their securities, and his rejection of Heydrich's demand to place the Jews in ghettos. It is a fact proved by the minutes of 12 November 1938, that Funk opposed Heydrich's proposal and said: "One did not need ghettos, the Jews could move closer together among themselves, the life of 3 million Jewish people among not less than 70 million Germans could surely be regulated without ghettos." Funk thereby wanted to prevent the Jews from being interned in ghettos. Of course at that time Funk did not succeed completely in his point of view. And so, for example, his proposal to let the Jews keep their securities was refused although Funk called attention to the fact that a realization of the Jewish securities would suddenly flood the German stock market with securities valued at half a billion and therefore would inflict serious consequences upon the German stock market. Decisive for the judgment of the defendant Funk is his obvious effort to save for the Jews what could be saved under the given circumstances, and thereby we must not lose sight that in all those measures Funk acted only in his capacity as Minister of the Economy, that is, as official, who merely gave the order to execute the command which Goering, as plenipotentiary of the Four-Year-Plan, had issued on Hitler's orders. Funk thereby found himself on the very same position of constraint as, for example, the Reich Finance Minister Graf Schwerin-Krosigk, who, at the same time, had to issue the orders regarding the punitive levy of 1 billion Reichsmark to be paid by the Jews or as the Reich Minister of Justice and the Reich Minister of the Interior, both of whom had issued analogous orders for execution in their respective sphere of business.

It is now for the Tribunal to give a fundamental ruling on the difficult legal question whether an official of a State, the government of which has been legally recognized by all governments of the world, is liable to legal punishment for putting into effect a law which has been passed in accordance with the legal order of this State. This legal problem is entirely different from the other question whether or not the fact that an official order when given by a superior can serve as an excuse.

Our sense of justice fully admits that a citizen, an official, or even a soldier cannot defend himself by pointing to the official order given to him by his superior, if this order obviously implies an illegal act and, especially, a crime, and if the subordinate under the existing circumstances and in due consideration of all the accompanying facts realizes or should realize that the official order is contrary to the law. If this latter prerequisite exists, one may in general fully approve that the right is not accorded to the subordinate to refer to an official order of his superior as an excuse and to maintain that he was only carrying it out. In that respect this stipulation of the Charter does not practically contain anything new, but only the confirmation and further development of legal principles which to a varying extent are recognized in the penal law of most of the civilized nations to-day. A certain precaution, however, seems to be indicated in this matter, as on the other hand it should not be forgotten that obedience to the orders of one's superiors is and must in future remain the foundation of every government in all nations if an orderly functioning of the state administrative apparatus is to be safeguarded, and that it is very dangerous if the civil servant himself is to decide for himself whether he should keep his oath of allegiance.

But in our case something different is involved. Here we are concerned with the obedience of the citizen and specially of the civil servant to the law of the state which was lawfully promulgated in accordance with the constitutional rules of this state. If we want to obtain a just and correct answer to this question, it will be pertinent to disregard entirely the German conditions and to pose the question what the decision would be if the civil servant of another, not German country, carries out a law. Let us assume for instance, some foreign country embracing a minority promulgated in accordance with its constitution a law according to which all members of this minority are to be exiled from its territory or the property of such inhabitants is to be confiscated for the benefit of the state or that the large agricultural estates of such inhabitants are to be turned over to the state or to be partitioned among other citizens. Now does the civil servant in this nation really commit a crime if he carries out this lawful order? Is it really the duty of the official who is in charge of the execution of this law, or for that matter has he even the right to refuse obedience to the law and to declare that in his personal opinion the law concerned was a crime against humanity? Would to-day in such a case any state grant its civil servants the authority to examine whether the promulgated law is contrary to the principles of humanity or to the fluctuating norms of international law? Which state would tolerate that its civil servants based upon this argument refuse the execution of a promulgated law?

[At this point material was omitted voluntarily by Defense Counsel.—Ed.]

The Tribunal will have to decide these legal problems. But Funk in his defense may point out the fact that according to his entire ideology and to his entire background it was especially difficult for him to issue those decrees for execution, although he believed he was only doing his duty as a civil servant.

In this connection I wish to remind of Funk's circular of 6 February 1939 (3498–PS., Trial Brief, p. 19), where he emphasizes to his officials that they had the duty to safeguard "in every way an unobjectionable execution" and where he mentally already declines the personal responsibility for these measures by expressly emphasizing: "To what extent and speed the authorities given by the Four-Year-Plan are to be used will depend on the decisions made by me in accordance with the directives of the Plenipotentiary for the Four-Year-Plan." This special reference to the legal decrees of the Four-Year-Plan, which was authorized to promulgate laws, originated in the desire of the defendant to express formally and solemnly and to establish for the times to come that in issuing the decrees for the execution, he fell, in the last analysis, victim to his obedience to the state, victim to his loyalty to the laws of the state to which he had sworn allegiance.

Especially in Funk's circular of 6 February 1939 (3498–PS) mentioned before, qualms of conscience are clearly expressed which had gripped Funk in those days, those qualms which, during his interrogation by an American officer on 22 October 1945 resulted in a complete nervous collapse so that Funk could not suppress his tears any more and told the interrogating officer: "Yes, I am guilty, I should have resigned at that time." These same qualms of conscience occupied the defendant during the entire trial and we remember that Funk in the session of 6 May 1946, when this point was discussed, was so deeply shaken that he could hardly continue to talk and that he finally declared that at this moment he fully realized that from here the disaster had started on its way until those horrible and frightful things which we have learned here and of parts of which he learned already during his imprisonment. He felt, as he said during his interrogation on 22 October 1945, a deep shame and a heavy guilt before himself and he still felt it to-day in the same way; but he had put the will of the state, the laws of the state above his own feelings and his warning voice, for he as a civil servant was duty bound to the state. He felt all the more bound, as these legal measures were necessary first of all for the protection of the Jews in order to save them from being completely without any rights and from further despotism and force.

Funk still to-day feels that it was a terrible tragedy that just he of all persons was charged with these things, he who never said a spiteful word against a Jew but had wherever he could always worked for tolerance and equality even toward Jews.

Funk, on his interrogation on 22 October 1945, said: "I am guilty," and it is not intended to investigate here, whether the defendant, when saying this thought in any way of a criminal or only of a moral guilt which he saw in the fact that he remained in an office, which compelled him to execute laws which were incompatible with his own philosophy of life. Funk is no jurist and was, therefore, not in a position to decide for himself the complicated legal question, whether an official of state which had been internationally acknowledged can be punished at all, when doing nothing else but executing laws which had been passed in accordance with the laws of this state. He did not see any "guilt" of his in the fact that he had signed, in November 1938, the executive regulations, as this had been his duty as an official. Rather, he considered himself guilty because he had remained a member of the government, although he found the acts of terror which had occurred intolerable and abhorred them; he did not get into the "conflict of conscience," whereof he spoke when he was interrogated because he acted according to the laws which he considered as necessary under the then prevailing condition but he got into such a conflict of conscience because he had not, in such a difficult situation, listened to the voice of his conscience and had not resigned his ministerial office. Surely no material considerations prompted his decision to stay in office in spite of his moral scruples; his renown as a journalist and his abilities in this respect would have made it easy for him to find another suitable position. Much is to be said for the opinion that the defendant was kept in office above all by the thought that his resignation would improve nothing, that on the contrary the administration would get still more radical under an unsuitable, fanatical successor, while he could hope, if staying in office, to alleviate much distress.

These considerations, which may have guided the defendant Funk in the first place, were certainly correct up to a certain point.

His secretary of state, Dr. Landfried, at least has stated as witness that further on too, Funk, time and again, had serious misgivings concerning this action against the Jews and very strongly showed his disapproval of all excesses and infringements of law committed by various government agencies in the course of execution. Funk could talk openly to his confidant Landfried, and he often complained to him that he had not had the power to prevent such excesses. But, as he said to Landfried: "We of the Ministry of Economy should take particular care that nobody is getting unwarranted enrichment out of the Jews on the occasion of the aryanization of business firms, i.e., of their transfer into non-Jewish hands." And Ministerial Councillor Kallus stated in his deposition of 19 April 1946 of the various measures which were taken at that time by Funk to protect the interests of Jewish business owners, and Kallus told us too, that Funk even personally endeavored to ensure that his orders were correctly carried out by subordinate authorities.

Sense of duty on the one hand and human feeling on the other were the motives, accordingly, which let the defendant stay in office and brought him thus into a situation he is charged with to-day as being the result of criminal action.

SS-Gold deliveries to the Reichsbank and concentration camps

It is really a particular tragedy in the life of the defendant Funk that he was not only condemned by fate, in the year 1938, to issue executive regulations of laws which he condemned inwardly and disapproved of as no other man, but that he got associated once more, in the year 1942, in a particularly terrible manner with the persecution of the Jews. I am thinking now of the depot of the

SS at the Reichsbank, of a matter for the elucidation of which a moving picture was produced of the steel safe of the Frankfurt branch of the Reichsbank and two witnesses were heard, Vice President Emil Puhl and Reichsbank councillor Albert Thoms.

The defendant Funk had already been examined about this matter at the preliminary proceedings on the occasion of his interrogation, on 4 June 1945 (2828–PS); at that time, however, no details were disclosed to him, and Funk has then made the same statement as he did before this Tribunal, viz., that he had to deal with the matter in question but a few times and shortly, and that he had not attached any importance to it. This is the reason too why he could, at first, not clearly remember those happenings any more. Accordingly, he did not know anything more about them than he had mentioned. Still he would have to expect that this matter would be brought up in the cross-examination in course of the proceedings. And this was done in fact by the American prosecution on 7 May 1946, and the said prosecution has submitted an affidavit of the witness Emil Puhl, which at first seemed to charge heavily the defendant Funk. Now it is remarkable that since the beginning of this trial the defendant Funk always actually referred to this witness Puhl for various points, and that he several times asked for his hearing since December 1945. Measured by ordinary human standards, Funk would not have done so if he had had a bad conscience and if he must have reckoned with the possibility of his being accused in the most serious way by his own witness in the matter of those concentration camp stories. But the oral examination of the witness Emil Puhl at this Tribunal showed beyond doubt that Puhl could not uphold at all the originally incriminating statements of his affidavit, as far as the personality of Funk and his knowledge of the particulars of the deposits of the SS were concerned.

It is true that Funk, as he remembered after the hearing of Puhl (cf. on this point the rectification of his statement in the declaration of the defense counsel to the Tribunal of 17 June 1946), had been asked at the time, occasionally by the Reichsfuehrer SS Himmler whether articles of value could be deposited in the strong rooms of the Reichsbank, which had been seized by the SS in the Eastern territories. This question of Himmler's was at that time confirmed by Funk who also told Himmler that he should delegate somebody in order to discuss the matter with Vice President Puhl and settle it. Himmler at that time declared that Gruppenfuehrer Pohl could do this and that the latter would get in touch with Vice President Puhl. That was all that Funk had discussed with Reich Leader SS Himmler and occasionally he also mentioned this to his Vice President Puhl because Puhl was actually directing the business of the Reichsbank and was concerned with this affair.

Nothing extraordinary was contained or recognizable for Funk in this question of Reich Leader SS Himmler because, as far as Funk knew, the SS was at the time in charge of the entire police service in the occupied territories in the East; for that reason it often had to confiscate valuables just as the ordinary police had done in the interior country. Moreover all gold coins, foreign currency, etc., in the occupied territories of the East had to be turned in according to the law and these deliveries in the East Territories were naturally made to the SS because no other state offices there were equipped for that purpose. Funk also knew that the concentration camps were under the direction of the SS and thought that the valuables the SS were to deposit with the Reichsbank for safe-keeping belonged very probably to that category of valuables which the whole population was obliged to deliver.

Finally as it is known the SS always participated in the combats, just as the German army; just as the latter the SS had collected so-called booty in the abandoned and destroyed towns of the east and had delivered it to the Reich. Therefore there was nothing extraordinary for Funk in the fact that the SS possessed gold and foreign currency and turned it in, in a regular way.

Essential in this entire matter is the question, whether Funk knew or saw that there were, among the objects delivered by the SS, gold frames of spectacles, gold teeth, and similar objects in extraordinary quantities, which did not fall into the hands of the SS by means of legal confiscations but by criminal acts.

If it could be proved that defendant Funk saw such objects in the deposit of the SS these objects should naturally have roused his suspicion. But we heard from the witness Puhl in all certainty that defendant Funk had no knowledge of this, yes, also that the Vice President himself did not know any particulars about it. In any case Funk never saw what particular gold objects and what quantities were delivered for the SS.

Now it was stated against Funk that he had several times entered the vaults of the Berlin Reichsbank and one felt entitled to the conclusion therefrom that he could not have helped seeing what objects had been delivered by the SS. This conclusion is obviously wrong, because the evidence shows that during the entire war Funk went to the vaults of the Reichsbank only very few times in order to show these vaults and the bullion of the Reichsbank stored therein to visitors, especially to foreign guests. But during these few visits he never saw the deposit of the SS. He never observed what in particular the SS had deposited in his bank. This is established without doubt, not only by the deposition of defendant Funk himself, but also by the testimony of Vice President Puhl and the Councillor of the Reichsbank Thoms. This, certainly, unsuspecting prosecution witness who offered himself as a witness declared under oath that the valuables were delivered by the SS in locked trunks, boxes, and bags and were stored in these containers and that Funk was never present in the vaults when the contents of an individual box or trunk were sorted out by the employees of the bank. Thoms, who supervised the vaults, never saw defendant Funk there. Therefore Funk neither had knowledge of the amount that the deliveries of the SS gradually had formed nor did he know that the depot contained jewelry, pearls, precious stones, spectacle frames, and gold teeth. All that, he never saw and none of his officials ever reported to him about these things.

Now it is the opinion of the prosecution that Funk, being president of the Reichsbank, surely must have known what was kept in the vaults of his bank; but also this conclusion is evidently false and does not take into consideration the actual conditions in a central bank of issue. Funk, who besides was Reich Minister for the Economy, had in his position of a president of the Reichsbank, no occasion whatever to look after a single deposit, even if it happened to belong to the SS. As a president of the Reichsbank he did not look after any deposits of other clients of his bank as this was not his task. He only once, owing to an inquiry of his Vice President Puhl, asked Reich Fuehrer SS Himmler whether the valuables deposited by the SS at the Reichsbank could be realized, i.e., in the legal course of business of the Reichsbank. Himmler answered in the positive and Funk passed this answer on to his Vice President Puhl.

But in this matter he only thought of gold coins and foreign currency, that is to say of such values which quite generally in the German Reich had to be turned in to the Reichsbank and which were and had to be realized by the latter. Never did the idea occur to Funk that the deposit contained gold teeth or similar objects originating from criminal actions in concentration camps. He heard of this, with great horror, during the trial.

The only part of the statement of witness Puhl that yet remained in a way suspect was the question of secrecy: Vice President Puhl as a witness declared in the beginning that Funk had told him the matter of the deposits of the SS should be kept strictly secret. Funk on the other hand always denied this very decidedly and declared under oath that he never talked with Puhl about such secrecy at all. Now at first sight one statement was pitted against the other. Vice President Puhl's statements referring to this point seemed slightly contradictory from the beginning. At one time he said that this secrecy had not been anything extraordinary because, after all, secrecy applies to everything that occurs in a bank; answering a special question Puhl stated repeatedly that he did not notice whether the defendant Funk had spoken of secrecy.

When, however, the affidavit of the witness Thoms of 8 May 1945 was read and pointed out to the witness Puhl, Puhl finally deposited upon oath on 15 May 1946, that it was clearly evident therefrom, that the desire for secrecy emanated from the SS. The SS made a point of having this business treated with secrecy, the SS had been the originator of the obligation for secrecy. Thus reads the literal wording of the end of the statement of the witness Puhl to which he swore and at the conclusion of which he again confirmed that the obligation for secrecy was desired and imposed by the SS.

Herewith the initial contradiction regarding this point between the statements of the defendant Funk and those of the witness Puhl was altogether accounted for. Puhl himself no longer maintained his original assertion that it was Funk who had ordered the maintenance of secrecy with regard to the SS deposit. Thus we must assume that the statement of the defendant Funk is correct also in this point and deserves preference; for he had declared from the very beginning and under oath that he himself knew nothing of a secrecy and that he had never spoken of such a secrecy to Puhl. Moreover there was no reason for Funk to talk to Puhl about a special secrecy since Funk ostensibly was of the opinion that the valuables involved were of such nature as made their confiscation and turning in mandatory and which belonged within the regular lawful business sphere of the Reichsbank, regardless of whether these articles subject to confiscation were the property of an inmate of a concentration camp or of a free person.

It was never clarified by the evidence submitted, why the SS on their part stressed the maintenance of secrecy toward Vice President Puhl and why, furthermore, the SS opened a deposit in the name of Melmer instead of in the name of the SS, and the prosecution on their part did not attach any importance to clarifying this point. At any rate the demand of the SS for secrecy evidently did not strike Vice President Puhl as unusual, just as little as it did the witness Thoms who confirmed the fact that this secrecy was nothing unusual. One fact however remains significant, namely, that before the numerous personnel of the Reichsbank no secrecy was maintained about the nature of the individual articles; on the contrary, that very personnel of the Reichsbank was entrusted by Puhl with sorting the turned in valuables and their conversion into money at the pawn shop. Dozens of Reichsbank officials who regularly entered the vaults were in a position to see the individual articles there. The Reich Central Pay-Office (Reichshauptkasse) quite openly settled accounts for the conversion of valuables into money with the Reich Ministry of Finance in a regular routine manner. Funk, still to-day, does not know whether and to what extent agreements for settling accounts with the Reich had been reached between the Finance Minister and SS Reichsfuehrer Himmler. He was never interested in it nor did it concern him.

All these facts proved by the evidence, conclusively emphasize that Funk personally did not know of these matters and that Vice President Puhl and Reichsbankrat Thoms thought nothing bad about them even though Thoms should have seen of what nature the deposits were.

For this reason, there is no longer a need to examine the obvious question whether the initial statements of Puhl with regard to the deposits of the SS were not from the beginning to be received with a certain skepticism, as he ostensibly had the understandable urge—at least in his written affidavit—to shift responsibility upon the shoulders of his President Funk, in order to escape his own responsibility for the unpleasant facts of the case, when during his detention he was told that the gold objects of the SS consisted for the greater part of spectacle frames and gold teeth taken away from victims of concentration camps. Originally not even Puhl seems to have thought bad about the whole matter. For him the matter was an ordinary business transaction of the Reichsbank for the account of the Reich, which he dealt with in the same manner as he dealt with objects of gold and foreign currency that had been seized by the Customs Investigation Office or the Office of Control for Foreign currency or any other State authority. Whatever is the opinion the responsibility of Vice President Puhl, all these cases lie outside any jurisdiction of the defendant Funk. In the course of the following period Funk had only two or three short and accidental conversations with Puhl regarding these gold deposits with a view of using the turned in gold coins and foreign currency. Otherwise Funk did not concern himself at all with the matter. He knew less about it than Puhl and it is not without significance that Puhl upon oath declared that he (Puhl) would have never permitted to have these objects of gold acquired by the SS brought to the vaults of the Reichsbank had he had the slightest notion of the fact that they were taken from victims of concentration camps under criminal circumstances. If Puhl could not know or guess this, then Funk could have known even less about it, and the initial statement of Puhl, which, in effect, said that the objects of gold were accepted by Funk for the Reichsbank intentionally and that they were made use of with the aid of the personnel of the Reichsbank was at least a statement by Puhl grossly misleading the prosecution. He, later on in captivity when he learned of the true connections, must surely have had the same compunctions as Funk, however innocent the latter was in the case. Puhl, in the end, stated upon oath that even he would not have stood for such transactions and he would have brought the matter to the attention of the directorate of the Reichsbank as well as to the attention of President Funk had he known that the valuables were taken from victims of concentration camps and if he had been informed about the nature of these valuables.

I therefore come to the following conclusion: Certainly the Reichsbank transacted business for the account of the Reich, the nature of which originated from criminal acts of the SS; Funk, however, knew nothing of this. He would not have tolerated such transactions had he known the true circumstances. Therefore, he cannot be made legally responsible for this.

The same applies with regard to credits of the Reichsbank for business agencies of the SS. The witness Puhl, in his written affidavit of 3 May 1946, first gave an entirely wrong picture also of this matter, for he stated that credits of 10 to 12 million Reichsmark placed at the disposal of the Gold-discountbank upon instruction of the defendant Funk were used for financing production in SS factories by means of labor of concentration camps.

In his oral examination as witness, Puhl then was asked whether Funk had any knowledge as to whether persons from concentration camps were engaged in these factories at all. Thereat, Puhl declared literally, "I am inclined to assume this, but I am unable to know it." Therefore, he was not able to give any definite evidence concerning Funk's knowledge. However, Funk's own statement in this matter is quite clear and convincing; it amounted to this, that he knew, indeed, of the credit request of the SS, that he even granted it, but that he knew nothing about the nature of the SS enterprises concerned and about the people working therein. Funk stated this on his oath. This credit deal, which by the way occurred about two years before the matter of the SS gold deposit, accordingly charges neither the defendant Funk, nor the witness Puhl; neither of them knew at that time—1940—anything about the conditions in the concentration camps, both rather learned about them only much later, viz., in the course of this trial, and the defendant Funk never knew that persons from the concentration camps were working in the SS factories mentioned.

In this connection it appears necessary to consider the question whether Funk ever visited a concentration camp: the witness, Dr. Blaha, who was examined here, stated that once Funk was in Dachau in the first half of 1944. This visit was stated to have been made as a sequel to a conference of the Minister of Finance in Berchtesgaden or in some other place of this region, and in which Funk participated. But the witness Dr. Blaha himself did not at that time see the defendant Funk in Dachau, but only heard from other camp inmates that on the occasion of an important visit to the camp, the Reich Minister of the Economy, Funk, too had been present. From the beginning, Funk energetically contested this. He stated this on his oath, and the affidavit made by his permanent companion Dr. Schwedler (Doc. Book, Funk 13) and submitted to you clearly proves that Funk never was in a concentration camp; Dr. Schwedler is in a position to know this, as he had at that time been the permanent companion of the defendant and had from day to day known where Funk stayed. In fact, Funk never was a Minister of Finance, and never took part in a conference of Ministers of Finance. Accordingly it is beyond any doubt that what the witness Dr. Blaha was able to tell here purely from hearsay is based on false information or on a confusion with another visitor, and that could all the more have been the case because Funk was rather unknown to the public. The result, therefore, is that Funk never visited a concentration camp and never came to know the conditions existing therein.

It is true that Funk does not by this statement want to assert that he did not know anything at all about the existence of such concentration camps. Just as almost any German, Funk knew, of course, that there were concentration camps in Germany after 1933, just as he knew that there were penitentiaries, prisons, and other penal institutions in Germany. But what remained unknown to him was the very large number of such concentration camps and of their inmates, amounting to hundreds of thousands, even millions. Unknown to him were also the countless atrocities committed in these camps, atrocities made known only in this trial; in particular, Funk only heard during this trial that there were even extermination camps, which served to murder millions of Jews. Funk had no knowledge of this, he stated it on his oath and it appears quite credible, as one of the most important results of this trial consists in the evidence that the German people, on the whole, did not know about the conditions in the concentration camps and about their immense number, but that, on the contrary, those conditions were held secret in such a cunning and cruel way that even the highest officials of the Reich did not learn anything about them.

Herewith defense have presented their view on that part of the indictment which, had it been true, would have imputed the man Funk in the most serious and terrible way. One may think as one pleases about acts of violence during a political and economic struggle, especially in stormy revolutionary periods; according to the opinion of the defendant Funk, there cannot be any dissent of view on one point, viz., concerning the atrocities in concentration camp and how they were committed for years, especially against the Jewish population. Anyone who participated in such unheard of atrocities should atone for it in the most rigorous way, according to the opinion of the entire German people just the same.

This is the point of view of the defendant Funk, too, which he expressed here, when on 6 May 1946 answering the American prosecutor, that as a man and as a German he was feeling a heavy guilt and a deep shame for what Germans perpetrated on millions of wretched people.

I am now at the end of the consideration of the Funk case. Your task as judges will be to find a just sentence for the defendant Funk too, a sentence which does not make him atone for other people's guilt—a guilt which he could not prevent, which he did not even know—but which only establishes the degree of his own criminal guilt. A sentence which is valid not only for to-day but which will be recognized as just also in the future, at a time when we shall have gained the necessary temporal distance to those terrible events and shall be considering those things without passion, like happenings of a remote historical period. A sentence which not only gives satisfaction to the nation which you are representing, but which will be perceived as just and wise by the German people as a whole. A sentence which does not only destroy and take revenge and sow hate for the future, but which makes possible and facilitates the re-ascending of the German people toward a happier future of human dignity and of charity, of equality, and of peace.

2. FINAL PLEA by Walter Funk

In the days of the greatest need of my people I joined a political movement, the same of which was the struggle for freedom, for the honor of our country, and for a true social community.

This party movement received the leadership of the State through legal channels. I served this State because of my obligation as an official and in the execution of German laws. I felt myself bound to carry out this duty and especially during the periods of danger of war and during the war itself at a time when the existence of my country was threatened in the extreme.

In time of war, however, the State is absolutely dependent on the loyalty and faith of its officials.

Here I have heard about horrible crimes in which the offices under my direction were partly involved.

But these are things which I learned here, before this Tribunal. I did not know these crimes and I could not have known them.

I have examined my conscience and my memory with the utmost horror—I have examined my conscience and memory with the utmost care and I have told the Court everything that I knew, openly and freely, and I have concealed nothing. As far as the deposits of the SS at the Reichsbank are concerned, I only did my duty as President of the Reichsbank. According to law, the acceptance of gold and foreign currency was one of the business tasks of the Reichsbank. The fact that the confiscation of these assets was taking place through the organs of the SS subordinate to Himmler, could not make me suspicious. The entire Police system, the border protection units, and especially the search for foreign currency in the Reich and in all occupied areas was under the jurisdiction of Himmler, and I was deceived and imposed upon by Himmler.

Until the time of this trial, I did not know and I did not suspect that among the assets brought into the Reichsbank there were mammoth piles of pearls, precious stones, jewelry, and gold objects of all kinds; and horrible as it may seem to say, gold teeth. That is something I was never told. That is something I never observed. I have never seen these things. Never did even a single person tell me in a single word of incidents like that.

The existence of these extermination camps was unknown to me, totally unknown. I did not even know a single one of their names. Never have I entered a concentration camp, either.

I assumed that some of the gold and foreign currency, which was deposited in the Reichsbank, came from concentration camps, and I stated this fact from the beginning in all of my interrogations openly. But, according to German law, everyone had to turn these assets over to the Reichsbank.

Quite apart from that, the kind and quantity of these shipments from the SS were not made known to me. How was I to even suspect that the SS had acquired these assets through desecrating corpses?

If I had known of these horrible facts, my Reichsbank would never have accepted these assets for storage and exploitation. I would have refused even in the face of the danger that it would have cost me my head. If I had known of these crimes I would not be sitting in the defendant's dock today. Of that, you must be convinced. There the grave would be easier for me than this tormented and shameful life which I have to endure now, this life full of accusations, suspicions, and slander raised against me.

Not a single human life has been lost because of any measures decreed by me. I have always tried to help people in need, and as far as it lay within my power, to bring happiness and joy into their lives; and for that, many will be grateful to me and remain grateful.

Human life consists of error and guilt.

I myself have made many mistakes, and I, too, have been deceived in many things and I freely admit, I freely admit I have been deceived too easily and in many ways have been too unconcerned and too gullible and therein I see my guilt. But I consider myself free of any penal guilt which I am alleged to have committed through discharging my official duties. In that respect, to-day my conscience is as clear as on the day, ten months ago, when I entered this courtroom for the first time.

XIII. HJALMAR SCHACHT

1. FINAL ARGUMENT by Dr. Rudolf Dix, Defense Counsel

Mr. President, Gentlemen of the Bench:

The singularity of Schacht's case appears graphically from one glance at the defendants' bench and from the history of his imprisonment and defense. Kaltenbrunner and Schacht sit on the defendants' bench. Whatever the powers of the defendant Kaltenbrunner may have been, he was in any case Chief of the Main Reich Security Office. Until those May days of 1945, Schacht was a prisoner of the Main Reich Security Office in various concentration camps. It makes a rarely grotesque picture to see a jailer-in-chief and a prisoner sharing the same defendants' bench. At the very start of the criminal trial this remarkable picture alone must have given cause for reflection to all those participating in the trial—judges, prosecutors, and defense counsels.

Schacht was banished to the concentration camp on the order of Hitler, as has been established here. The charge raised against him was high treason against the Hitler Regime. As the judicial authority the People's Court (Volksgerichtshof), headed by that hanging judge Freisler, would have convicted him, if his imprisonment had not been exchanged for one by the victorious Allied powers. Ever since the summer of 1944 I held the commission to defend Schacht before Adolf Hitler's People's Court; in the summer of 1945 I was asked to conduct his defense before the International Military Tribunal. This, too, is in itself a self-contradictory state of affairs. This, too, forces all those participating in the trial to have misgivings, as far as the person of Schacht is concerned.

One involuntarily recalls the fate of Seneca. Nero, as a counterpart to Hitler, put Seneca on trial for revolutionary activities. After the death of Nero, Seneca was charged with complicity in the bad government and atrocities of Nero, and thus in a conspiracy. A certain wry humor is not lacking in the fact that Seneca was then declared a pagan saint by early Christianity as soon as the 4th century. Even if Schacht does not indulge in such expectations, this historical precedent nevertheless forces us to remain always conscious of the fact that the sentence to be pronounced by this High Court will also have to defend itself before the judgment seat of history.

The picture of the Third Reich has been revealed to the Tribunal in a thorough and careful presentation of evidence. It is a picture with a great deal of background. An opportunity was given to depict, within the range of possibility, these backgrounds also. Within the range of possibility! But at the same time this means the limitation of such a thoroughgoing investigation through a judicial presentation of evidence which was, to be sure, thorough, but which nevertheless had to be brought to an end as soon as possible, according to the requirements of the Charter.

In order to learn what it was like under Hitler in German countries, there is still enough which has been left to the intuition of the Court. It is not possible and will never be possible to understand Hitler-Germany from a constitutional point of view according to the scientific conceptions and views of people with a legal mind. As a scientific theme: "The Constitution under Adolf Hitler is a 'lucus a non locendo'." Understand me well! "The constitution", which means a legal arrangement made by the Hitler State, and not the final pleading of Jahrreiss to illuminate the tyranny of a despot from some legal point of view. Possible, but difficult and therefore not yet published, would be a scientific sociology of the Third Reich. Only a very few Germans who lived in Germany knew the conditions and distributions of power within those circles of people who were apparently or actually called upon to do their share for the formation of a political will. Most of them will be surprised after the unveiling of this picture. How much less possible was it for a foreigner at the time of bringing the indictment to judge correctly the constitutional, sociological, and internal political conditions of Hitler-Germany. But the correct judgment of these things was a prerequisite for an indictment founded correctly from both the factual and the legal point of view.

I am of the opinion that the prosecution authorities were thereby confronted with what was for them an insoluble task. I am furthermore of the opinion that the prosecution would have never presented their criminal charges against the defendants under the head of a conspiracy, if they could have understood the distribution of political power in Hitler-Germany in the way as this is perhaps possible to-day for an intelligent observer and listener at this trial who is gifted with political intuition, even if this would be difficult enough.

A conspiracy within the meaning of their indictment was as a practical matter not possible in the Third Reich of Adolf Hitler. In the Third Reich nothing was possible but a conspiracy by the opposition against Adolf Hitler and the regime. As we ascertained here, several of such conspiracies took place. Conspirators act somewhat differently to one other than an assistant acts toward the chief perpetrator. The part to be played by the individual conspirator in the execution of the common plan may vary. Several or even one of the conspirators may hold a leading position within the conspiracy. At all times however, cooperation is necessary. Usage of language in itself precludes speaking of a conspiracy if only one commands and all the others are merely executing organs. I am therefore of the opinion that what in this Court has been defined as crime can never be subsumed (subsummiert) according to criminal law as facts in a case of conspiracy. Other legal factors which might come into question are of no interest to me as defense counsel for the defendant Schacht, because as an individual person, without connection with deeds of others and consequently only on the basis of his own actions no criminal charge at all can be brought against Schacht. Schacht personally wanted the permissible and the best. His actions served this desire. To the extent that he erred from a political point of view, he is just as ready to have history judge his deeds. But even the greatest dynamics of international law cannot penalize political error. If it did this, the profession of the statesman and politician would be impossible. World history moves more through mistakes and errors than through correct perceptions. According to Lessing's wise word the recognition of absolute truth is reserved to God. There remains to man only the endeavor to find truth as the highest possession. Old Axel Oxenstierna already said and probably appropriately, nescis mi fili quanta stultitia mundus regitur.

Schacht declared here that he was most grossly deceived by Adolf Hitler. Thereby he admitted the erroneous element in certain of his decisions and actions. The prosecution disputes Schacht's good faith and imputes to him the dolus of being Adolf Hitler's agent in finances he deliberately worked for a war of aggression thereby placing him implicitly under the angle of conspiracy before penal law because of all the deeds of cruelty which were committed by others during this war. Even the Prosecution was not able to produce direct proof for these claims. They tried it first by means of purportedly documentary evidence in the form of misinterpreted utterances by Schacht, torn from their context. Herein the Prosecution referred to witnesses who could not be made available for examination before this Court because in part they were absent, or in part they had died. I recall the affidavits of Messersmith and Fuller and the diary notes of Dodd. Their inadequate value as evidence was thoroughly set forth to the Tribunal in Schacht's examination by me. In the interest of saving time, I do not like to repeat what has been said and surely must still be within the recollection of the court.

The Prosecution further attempted to confirm its charges on the basis of Schacht's actions as determined beyond reason of doubt. All these arguments by the Prosecution are erroneous conclusions from alleged indexes. I am confining myself to enumeration of the most essential false conclusions. The others follow by necessity either directly therefrom or analogous therewith.

Schacht was a foe of the Treaty of Versailles, so says the Prosecution. This he was indeed. The opposition in itself the Prosecution does not hold against him. However, it concludes therefrom that Schacht strove to do away with it by force. The Prosecution says that Schacht favored colonial activity. He did indeed. It does not reproach him because of it but it concludes therefrom that he wanted to conquer the colonies by force and so it goes on.

Schacht cooperated with Hitler as President of the Reichsbank and Minister Economics, consequently he indorsed Nazi ideology. Schacht was member of the Reich Defense Council, consequently he was in favor of a war of aggression. Schacht helped to finance rearmament during its first phase until early in 1938, consequently he wanted war. Schacht welcomed union with Austria, consequently he approved of a policy of violence against that country. Schacht devised the "New Plan" of commercial policy, consequently he wanted to procure raw materials or armament. Schacht was concerned about the possibilities for existence for excess populations in Central Europe, consequently he wanted to attack and conquer foreign countries and to annihilate foreign peoples. Over and over again Schacht warned the world against an anti-German policy of oppression and the moral defamation of Germany, consequently Schacht threatened war. Because no written evidence has been found for Schacht's withdrawal from his official positions as a result of his antagonism to war, the conclusion is that he resigned from these official positions merely because of his rivalry with Goering.

The enumeration of erroneous conclusions could be continued as long as one likes. It finds its culmination in the false conclusion: Hitler would never have come to power if it had not been for Schacht; never would Hitler have been able to rearm if Schacht had not helped. This kind of evaluation of evidence would condemn the automobile manufacturer because, while drunk, the driver of the car ran over a pedestrian.

In his speeches or writings Schacht never advocated force or perhaps even war. It is certain that after Versailles he pointed out again and again the dangers which would result from the moral outlawing and from the economic exclusion of Germany. In this opinion he is in the best international company. It is not necessary for me to cite before this Tribunal the numerous voices, not of Germans but of members of the victor States, beginning soon after the Versailles Treaty, which are in the same tone as the warnings of Schacht. The correctness of this confirmed proof will in any case be valid for all time. At no time did Schacht, however, recommend other ways or even declare them possible, than those of a peaceful understanding and collaboration. To him as a pronounced economic politician it was clearer than to any other, that a war can never bring a solution, not even when it is won. In all of Schacht's statements his pacifist attitude was expressed again and again in the shortest and the most appropriate manner perhaps, in that statement at the Berlin Congress of the International Chamber of Commerce, when Schacht, in the presence of Hitler, Goering, and other heads of the Government called out to the assembly: "Believe me, my friends, the nations wish to live and not to die." This pronounced pacifist attitude of Schacht is likewise confirmed by all witnesses and affidavits.

For the few in the world—and I purposely say in the world and not only "in Germany"—who correctly recognized Hitler and his Government from the very beginning, it certainly was an anxiety and a sorrow, at the very least a problem, to see a man like Schacht placing his services and his great specialist ability at the disposition of Adolf Hitler after he had come to power. The witness Gisevius also shared this anxiety, as he has testified here. Later on he convinced himself of Schacht's honorable intentions through the latter's belligerent and brave behavior in the years 1938 and 1939. In his interrogation Schacht has outlined the reasons which caused him to act in this manner. I need not, and I do not wish to repeat them in the interests of saving time. The evidence has not shown anything which would be contrary to the veracity of this presentation by Schacht. To the contrary. I only refer, for example, to the affidavit of Secretary of State Schmid, Exhibit 41 of my document book, which contains detailed statements on this subject on page 2, which are in complete agreement with Schacht's description. Consideration of the remaining testimonies of witnesses and affidavits as a whole leads to the same result. In order to understand the manner in which Schacht acted at that time as well as directly after the seizure of power, and also later, when he had recognized Hitler and his disastrous effect, it is absolutely necessary to gain a clear picture regarding the disastrous secrecy of Adolf Hitler and his system of government. For both are the soil from which Schacht's actions arose, and by which alone they can be explained. I realize that one could speak about this for days and that volumes could be written about it, should one wish to exhaust the subject.

However, I also realize that before this Tribunal short references and spotlights are sufficient in order to gain the appreciation of the Tribunal. The disintegrating collapse of imperial Germany in the year 1918 presented the German people with a parliamentary-democratic form of Constitution, which was established superficially and which never became part and parcel of the nation. I claim that all unselfishly directed political thinking must strive for democracy, if by it the protection of justice, tolerance against those of different convictions and liberty, as well as the political shaping of humanity is also understood. These are the highest ideals of all time, which, however in certain constituted forms harbor especial dangers for themselves. If, at the introduction of democracy on the European Continent, reactionary political thinkers like Count Metternich and the like opposed all democratic tendencies, then they did this because they saw only the dangers of democracy, and not its characteristics for the advantage of humanity and its necessity at the time. With regard to these dangers they were unfortunately right. The cleverest nation which has perhaps ever lived, the Greeks of Antiquity, had already pointed out the danger of the development of democracy through demagogy to tyranny, and probably all philosophical political thinkers from Aristotle to Thomas Aquinas up to the present time have pointed out the danger of this development. This danger increases in extent if democratic freedom in the formal state-legislative sense does not grow and become inherent in the nation, but becomes more or less a chance gift to a nation.

"En fait d'histoire il vaut mieux continuer que recommencer," a great French thinker has said. Unfortunately this has caused Germany to become the latest and it is to be hoped the last example of a tyranny established by means of the devilish demagogy of one individual despot. For there is no doubt: The Hitler Government is a despotism of an individual, which can only find comparison in Asia at a time which is far behind us. In order to understand the attitude of every individual toward this Government, not only that of Schacht, not only that of every German, but generally that of every person or that of each and every government in the world, which has collaborated with Hitler, and such collaboration, based on confidence on the part of the foreign countries was much greater toward Hitler than toward any government of the so-called interim-Reich or of the so-called State of the Weimar Constitution; it is therefore necessary to analyse the personality of this despot, this political pied-piper, this genial demagogue, who, as Schacht here testified in his interrogation with comprehensible excitement, did not only betray him, but also the German people and the whole world. In order to complete this betrayal, Hitler was forced to draw innumerable clever and politically trained personalities besides Schacht, even outside the German frontiers, into the aura of his personality. In this he even succeeded with prominent foreigners, even those in leading political positions.

I shall refrain from citing names and from quotations to prove this point. The fact is generally known to the Tribunal. To mention names at this moment would not be without a certain discomfort as much for the audience as for the speaker, especially in this room and at this trial. In this conjuncture, a defense counsel can afford to be considerate when it is not damaging to the cause he defends. It is immaterial, however, when the fact quoted by the defense counsel in his argument is already known to the Tribunal by reason of the latter's general knowledge and experience. How was this ascendency of Hitler both in Germany and abroad possible? Of course Faust, too, was under the ascendency of Mephisto. In Germany, every circumstance exposed at the examination of evidence as to the situation then prevalent in Germany ran counter to this ascendency, and the same applies to Schacht. The total collapse of the parliamentary party system and the resulting necessity, then already felt by the existing Government, of having to govern by emergency decrees enacted without parliamentary participation, and thus establishing a dictatorship of the ministerial bureaucracy as a fore runner of the Hitler dictatorship, elicited from nearly every quarter a clamor for a stronger leadership. The economic crisis and employment opened the ears of the masses as misery always does, to demagogic whispers. The complete lethargy and inactivity of the existing middle and left parties moreover instilled critical and intelligent observers, which Schacht assuredly was, with the moral deadness and yearning to welcome impetuous political "dynamics" and activity. So far as one so sharp witted and perspicacious as Schacht already discovered faults and dark sides at the outset, he could believe, and Schacht did believe, that he could, precisely by active penetration into the movement or by cooperation with leading State departments, which he did combat, quickly and easily these dark sides, attendant upon every revolutionary movement. "When the eagle soars, vermin settle upon its wings," replied the late Minister of Justice Guertner, quoting from Konrad Ferdinand Meyer's "Pescara," when I remarked to him about these dark sides after the seizure of power. These considerations are in themselves reasonable and plausible. The fact that they contained a political error, bearing even upon Schacht's person, does not deprive them of their good faith and honest inspiration. We do not, however, wish to forget that we have heard here, during the proceedings, a message from the American Consul General Messersmith, dating from 1933, in which he joyfully hails the report that decent and sensible people are now joining the Party, as it is hoped thereby that this would do away with radicalism. I refer to the document submitted here by the Prosecution: Document L–198, a report by the American Consul General Messersmith to the Secretary of State in Washington.

"Since the election on March 5th, some of the more important thinking people in various parts of Germany have allied themselves with the National-Socialist movement, in the hope of tempering its radicalism by their action within rather than without the Party."

But what Messersmith very reasonably says of ordinary Party members of that time, naturally applies also, with the necessary adjustments, to the man who placed his collaboration in a leading government post at Hitler's service. The motive given by Schacht for his decision at the time to accept the post of President of the Reichsbank and later of Minister of National Economy is therefore intrinsically credible and has no immoral or criminal implication. Schacht has always been a man of action. He only lacked at the outset the intuition to recognize the personalities of Hitler and some of his associates for what they were. But that is no punishable act, neither does it indicate a criminal intention. This intuition has been generally lacking both within and without the German frontiers. Intuition is an attribute of fortune and an irrational gift.

Every man has his limitations, even the most intelligent. Schacht is assuredly very intelligent, but with him reason has prevailed to the detriment of intuition. In conclusion, this circumstance can only be fully understood when these mysterious forces are taken into account, which affect universal events and of which Wallenstein says: "The earth belongs to the evil Spirit, not to the good" and goes on to speak of the "Powers of Darkness which under cover of darkness, perform evil deeds." Adolf Hitler was a prominent example of these powers of darkness and the effects he created were all the worse as he lacked any Satanic grandeur. He remained a half educated, completely material little bourgeois who, moreover, had no sense of justice whatever. Defendant Frank says truly of him that he hated jurists because the jurist appeared to him as a disturbing factor for his power. Thus, he could promise anything to anybody and not keep his promise because a promise for him meant only a technical instrument of power, not a legal bond. Neither was the pernicious effect of Himmler and Bormann detected by Schacht at the time, or indeed by anybody. Nevertheless, all those crimes that are now indicted in this Court, matured within this trio, for, to Himmler as well, politics were identical with murder, and his purely biological view of human society represented it to him as a herd of cattle and never as a social and ethical community. A personality like Adolf Hitler and its effect upon men, including such intelligent men as Schacht, can thus only be correctly judged by following the prophetic vision of the poet, as I have endeavored to do, and penetrating into spheres of knowledge generally closed to the reasoning power of man. The demoniac has undoubtedly been incarnated in Adolf Hitler for the hurt of Germany and the world, and, to sum up, I can, here—and this is necessary for the comprehension of the conduct of Schacht as well as of all those others who deliberately and in all purity of heart, offered their services to Hitler—quote a passage from our Goethe, which says everything in few words and discloses the deepest mysteries. Here lies the key to the comprehension of all those followers of Hitler. May I quote from "Poetry and Truth" Part 4, Book 20, as follows:

"Although the Demoniac can manifest itself in everything material and immaterial and indeed be most obviously apparent in the beasts, it most usually stands in the most wonderful association with man, and constitutes a power disturbing, where not opposed, to the world order." For the phenomena caused thereby, there are innumerable names. For all philosophies and religions have tried, both prosaically and poetically, to solve this riddle and finally to dismiss the matter, which they are, in the future, at liberty to do. But the demoniac assumes its most dreadful form when it appears in an overwhelming measure in a particular person. During my lifetime I have had occasion to observe several such persons either closely or from afar. They were not always the best of persons, either spiritually or by their talents, and they were seldom recommendable by their goodness of heart. A tremendous force, however, emanates from them, and they exercise an incredible power over every creature, even over the elements, and who can tell how far such an influence will extend. No coalition of honest forces can prevail against them; it is in vain that the better part of humanity attempts to put them in disrepute as aberrants or as impostors. Humanity as a whole is attracted by them. They seldom or never find contemporary equals, and nothing short of the Universe itself, against which they initiated the fight, can prevail against them; and those observations can indeed inspire that curious though terrible phrase: "Nemo contra Deum, nisi Deus ipse."

I think I have demonstrated that the fact of having served Hitler does not criminally inculpate Schacht in any way, and that it can by no means be concluded from this fact that he had been acquiescent, at the time, to the criminal deeds of Hitler and his regime. Indeed, he did not think them possible. Neither was it a case of dolus eventualis, on the contrary: so far as the violent character of the regime disturbed him, he believed he could, by his appointment to an important post, contribute to the abolition and prevention of those consequences he disapproved, and promote, in his operative sphere, Germany's honorable and peaceful ascension.

Even if it turned out that he not only served Hitler after the seizure of power but had helped him to seize power, no single reproach could be made against him. This latter charge is therefore void as evidence of criminal behavior or of criminal intention. However, there is no need for this argumentation, since actually Schacht did not help Hitler to power. Hitler was in power when Schacht began to work for him.

Hitler had victory in his pocket when the July elections of the Reichstag in 1932 brought him no less than 230 mandates. These represented about 40 percent of the total votes. Such an election result for a party had not been seen for decades. Thus, the immediate political future was established in a Government headed by Hitler, thanks to the very rules of the German democratic constitution and of every democratic constitution. Every other method was fraught with the danger of civil war.

It was natural that Schacht who at that time honestly believed in Hitler's political mission did not wish to take this road. It was likewise natural that he should become an active link in the chain when he believed that by this attitude he would be able to prevent harmful radicalism from materializing in the economic political domain. A wise French statesman says:

"We are faced at some time or other and in some way or other by the task of creating advantages or preventing abuses; for this reason a patriotic man, according to my conception, can and must serve any government set up by his country." In his opinion Schacht was serving his country and not Hitler, if he was serving Hitler at that time. This opinion may have been as erroneous as possible and subsequently it has revealed itself completely false as far as Hitler was concerned; Schacht can in no case be criminally charged for acting as he did at that time, neither indirectly nor circumstantially. We must also not forget that the Hitler of 1933 not only seemed to be different from the Hitler of 1938 or even of 1941, but actually was different. At his interrogation Schacht already referred to the transformation caused by the venom of worship by the masses. The transformation of such personalities is a psychological law. History reveals this in Nero, Constantine the Great, and many others. In the case of Hitler, there exist many unsuspected witnesses for the truth of this fact, unsuspected in this sense that a purpose or an intention to violate the law, to raise terror to a principle, and to surprise mankind by a war of aggression, can never be imputed to them. I am going to quote a few of them. I could multiply the quotations a hundred fold.

[The Tribunal had previously rejected as evidence the writings of Lord Rothermore and Defense Counsel was reminded of this ruling.—Ed.]

I quote from Summer Welles' book "Time for Decision" published in New York in 1944: "Economic circles in each of the Western European democracies and of the New World welcomed Hitlerism." And it is only right, when Great Britain's last ambassador in Berlin even during the war states in page 25 of his book: "It would be highly unjust not to recognize that a great number of those who joined Hitler and worked for him and his Nazi regime were honest idealists," and further on he makes the interesting remark: "It is possible Hitler was an idealist himself in the beginning." The Government of Great Britain would never have concluded a naval treaty with Hitler-Germany already in April 1935, and therewith have contributed in a calculated way to a modification of the Versailles Treaty, if she had not had entire confidence in Hitler and his Government. After all, the same holds good for all international treaties concluded by Hitler, including the treaty with Russia concluded already in August 1939. And it is to-day deeply affecting when an ethically prominent man as the late British Prime Minister Chamberlain declared in a speech not later than January 1939 (namely at a time when Schacht had long since been treading the obscure paths of conspiracy), and in spite of the events of the year 1938, that he had gained the definite impression from Hitler's previous speech that it was not the speech of a man who was making preparations to plunge Europe into another war. I do not doubt that these words were not spoken as a matter of tactics but reflected the speaker's true opinion. Such examples could be quoted in great number. Would one for the years 1933 to 1939 deny a German the right to come to the same opinion about Hitler in good faith? This is also not inconsistent with the fact that Schacht entered office as a Minister of Economic Affairs only after 30 June 1934. Only in retrospect can one fully realize the monstrosity of these events. In June 1934 we were still in the midst of a revolutionary movement. History can probably ascertain similar occurrences in each such revolution. I need not prove this individually, neither should I like to do so here for the reasons previously discussed. The events of 30 June were just as little or even less reason for Schacht to turn away from Hitler with disgust, as they were not enough to prevent the governments in the world from not only continuing diplomatic relations with Hitler in full confidence, but also rendering him great honors and allowing him to score important successes in foreign policy, especially after 1934.

If Schacht however cannot be criminally charged with the fact that he put himself at the disposal of Hitler's government, it is completely superfluous indeed. It would be of minor importance to intend by means of long statements to excuse individual acts such as the petition addressed to the Reich President in 1932 or his letter to Hitler in the same year. For someone who knows life the explanation for them comes quite naturally out of this fundamental attitude of Schacht. Should this attitude prove to be unobjectionable as far as criminality and the technique of handling evidence is concerned, then no such documents can be adduced against Schacht. All that matters is the principle. The same holds true for Schacht's participation in the so-called meeting of industrialists. In this subject I should like to remark by way of clarification (see Schnitzler affidavit), that Schacht neither conducted this meeting nor administered these funds exclusively for the National-Socialist Party.

Now a witness has given a verdict of good conduct for this very period of Schacht's attitude toward the seizure and establishment of power: "Schacht has been an untrustworthy and shifty fellow, Schacht betrayed the cause of democracy at that time, he—the witness—, therefore, refused in 1943 to join a government that should overthrow Hitler with Schacht's participation." He was former minister Severing who, according to his own statement, left his ministerial seat and room on 20 July 1932 when the President of the Police of Berlin accompanied by two police officers called on him demanding his removal from office with the assertion that they had been authorized to do so by the Reich President. Severing left the field, as he said himself, to avoid bloodshed. In spite of the great respect which I feel toward Severing's clean political character, I am forced to my regret to deny him any right to give a good name to statesmen who unlike him and his government coalition would not remain in lethargic passivity. Severing and his political friends do not, indeed, bear responsibility before a Judge, but before history for allowing Hitler to seize power, a disproportionately greater responsibility than Hjalmar Schacht because of their indecision and, finally, their lack of political ideas. This responsibility will be all the greater, as the witness claims to have already recognized at that time that Hitler's accession to power meant war. Even if one believes him to possess this correct political intuition, his and his political friends' responsibility will be all the greater in view of their passivity then and later, and on the other hand disproportionately greater than that of Hjalmar Schacht. Our German workers, however, are really no more cowardly than the Dutch. Our hearts rejoiced to hear a witness give evidence here on oath about the manly courage of Dutch workers, who dared to strike under the very bayonets of the invading army. The justifiable adherence of Severing and his political friends to the German working class might perhaps have induced them not to watch the dissolution of the trade unions with such blunt passivity, as was the case in 1933 when their natural leaders, such as Severing and his colleagues should have attempted a little and exposed themselves. Finally, the Kapp revolt in 1923 was also overcome by the general strike of the workmen. The Hitler Regime was not so strong in 1933 that the truth of the poet's word addressed to the workers did not need to be feared: "All wheels stand still when it is your strong arm's will." The National-Socialist Government at that time was quite well-informed about this and had corresponding apprehensions. This was demonstrated also by Goering's testimony on 13 October 1945, minutes of which were cited and handed over by Professor Kempner on 16 January 1946. Goering said: "You must consider that at that time the activity of the communists was extraordinarily strong and that our new Government was not very secure as such." But even this strong arm just mentioned required a guidance which remained denied to the working class. Men like Severing were called to it. In all justice, they will have to account for their passivity, not before the judge in a criminal court, but before history. I do not presume to make a final judgment. I restrict myself to revealing this problem and to attributing with complete human respect a strong and painful measure of self-righteousness to the witness Severing if he feels himself called upon to accuse others when examining the question who from the viewpoint of history is guilty of the seizure and strengthening of the power of Nazism, namely if in contrast to Schacht he foresaw intuitively the later evolution of Hitler, instead of submitting himself in humility to the judgment of history, with reference to his assuredly decent disposition and pure volition.

We wish to keep always before our eyes in order to maintain the purity of historical truth, that at the beginning of Nazism—with the exception of an intervention from abroad—there were two power groups who could perhaps have liberated Germany: the army and the working class, both of course under corresponding guidance. I must be more detailed on this point, because such a detrimental remark by such a blameless and distinguished man as Severing, brings with it the danger of unjust deductions regarding my client. It would have been agreeable to me if I could have been spared this explanation of Severing's incriminating testimony. Severing has further raised the reproach of political opportunism against Schacht. In politics, the boundary between opportunism and statesmanlike efficacious dealing is very fluid. Before the conduct of Schacht in 1932 and 1933 is appraised as that of an opportunist, his past should be looked into. Since 1923 this past was lived in complete publicity. It was partly the object of these proceedings, it is partly juridical notoriety. This past speaks rather for the fact that Schacht does what he judges to be right, not only with great lack of consideration, but also with great courage. He proved his courage as conspirator against Hitler, as is necessarily proved by analyzing this activity as conspirator, and as Gisevius expressly described him here. But let us now go back to 1923. At that time he stabilized the Mark against all parties interested in inflation; in 1924 he blocked credits against all hoarders of foreign currency; in 1927 he deprived the exchange speculators of the credit basis for exchange gamble. He fought from 1925 to 1929 against the debt and the expenditure policy of the municipalities and drew by this on himself the enmity of all mayors. He signed the Young-Plan in 1929 and thus defied the opposition of the heavy industry's circles and in pursuit of this nature, he fought since 1934 against the errors and abuses of the Nazi-Ideology and has never carried out a desire or an order for himself which ran contrary to his conscience or his sense of justice. Every statesman must make certain concessions in a fanatical time. Certain preachers of ethics of which there are many to-day—who demand hardness of steel for the protection of principles, should not forget that steel has two qualities, not only the firmness, but also the pliancy.

At this time I request the Court to be permitted to state something beyond the translation of my pleading available to it, which I could not work into this translation because the cause for it came up at a time after the submission of my final pleading for translation, namely the statements of my colleague Dr. Nelte against the credibility of the witness Gisevius. Since I dwell here on the evaluation of a witness, it is the proper time here to answer this.

So far as my colleague Dr. Nelte found fault with the objective reliability of the testimony of the witness Gisevius in respect to his statements incriminating the defendants Keitel, Goering, and so on, I refrain from any statements. May the prosecution take any standpoint it desires. This is not my task.

But now Dr. Nelte has also attacked the subjective credibility of Gisevius in the personal moral of this witness and thus also indirectly the reliability of his testimony concerning Dr. Schacht. This demands my opinion, and namely one of a very basic nature. Your Honors: it is here where the souls separate. An unbridgeable cleavage opens up between Schacht's standpoint and the standpoint of all those who make these thoughts their own with which Dr. Nelte attempts to disqualify morally Gisevius, the deceased Canaris, Oster, Nebe, etc. I at least owe to my client this, to state the following very clearly and unequivocally:

Patriotism means faithfulness to the fatherland and the people and enmity to the quick against everyone who leads the fatherland and his own people criminally into misery and destruction. Such a leader is an enemy of the fatherland; in his influence on the fatherland he is many times more dangerous than the enemy in war. Every means, and namely a corsaire un corsaire et demi is just against such a criminal state leadership.

High treason against such a state leadership is true and genuine patriotism and as such highly moral, even during war. Whoever can still entertain the slightest doubt after the findings of this trial and finally also after the testimony of Speer about the cynic statement by Hitler in respect to the destruction of the German people, that Adolf Hitler was the greatest enemy of his people, in short a criminal to this people, for the removal of whom every means would have been just and every, yes every deed would have been patriotic. Worlds separate Schacht from everyone in the prisoners' dock who does not recognize this.

In order to cleanse the atmosphere, this must be said. I can save myself after this fundamental clarification to disprove details of the attacks of Dr. Nelte against Dr. Gisevius. So far as Dr. Nelte misses readiness to act in these resistance groups to which Dr. Schacht belonged, I only point to the many dead who were hanged on 20 July only, where Schacht belongs to the very few survivors, and he as well was to be liquidated yet in Flossenburg. I point to the fatal victims, numbering thousands of the political judiciary of the Hitlerian state. The war of conspiracy against Hitler, and the necessity for cunning, was not less dangerous to life and limb than exposure at the front.

Dr. Gisevius has admitted immediately to my loyally cross-examining colleague Dr. Kubuschock his error, resulting from the prohibition of publications, in the affair of Papen's resignation. I do not have to add anything further.

If I wind up now the evaluation of Schacht's conduct up to about 1935 and enter henceforth the period from 1935 to 1937, I may emphasize once more that, for the sake of saving time, I deliberately do not repeat the arguments which were fully brought to the knowledge of the Tribunal during the examination, thus the non-participation of Schacht in the legislation, which led to the abrogation of the rights of the people, as this took place before his entry into the Cabinet. The deciding event for the stabilization of Hitler's power, the amalgamation of offices of the President of the Reich and of the Chancellor of the Reich and on Hitler's personality, were also beyond his assistance and responsibility.

By this decree the Army took their oath to Hitler. The Chancellor of the Reich had not only authority over the police as before, but also authority over the Army. It is not my task to investigate who has to bear the political responsibility and historic guilt for this law; in any case it is not Schacht. Similarly it was before his entering upon office that the basic anti-Jewish laws were passed. He was quite surprised by the later Nurnberg laws. The decree dealing with the exclusion of Jews from the German economic life dated 12 November 1938 and the order for the confiscation of Jewish possessions of 3 December 1938 were issued after he had returned from the post of Minister of Economy and thus without his active collaboration. The same applies to the decree excluding Jews from the Reichs Labor Service, which did not weigh heavily on them.

The law concerning the death penalty for concealment of Foreign currency, the so-called law of betrayal of the people, was not directed against the Jews but solely against heavy industry and high finance, it was not made by Schacht but by the Minister of Finance. Schacht did not want such laws to be the cause of rupture, because he thought he had more important tasks to perform. This does not seem to be of such great importance, because Schacht had so let himself in for unpleasantness by his advocacy of the Jews in the Jewish question, by his public speeches and his exposes to Hitler, that it would be unjust to disqualify him politically or morally, not to mention juridically for this reason. I remember particularly the Reichsbank speech after the anti-Jewish pogroms in November 1938, the speech at Koenigsberg, the exposes of 1935 and so forth.

In the Third Reich Schacht was considered the most courageous and active protector of the Jews. I only refer to the letter of the Frankfurt business man Merton which was submitted to the court and to the illustrating statement of the witness Heyler. According to the latter, Himmler, when Heyler reproached him for the events of November 1936, replied that it had been ultimately the fault of the economic administration that things have gone so far. From a man like Herr Schacht one could not require anything more than that he exercised a constant restraining influence in the Jewish question and set himself against the will of the Party.

On my questioning him in reply, Justice Jackson defined this specific charge of the prosecution as follows: Schacht is not being prosecuted for anti-Semitism, but for activities, which stand in casual connection with the atrocities committed against the Jews within the framework of the war of planned aggression. From this it results that a denial of the guilt of a war of aggression leads with compelling logic to the denial of any guilt of the atrocities which were committed against the Jews during the war. Justice Jackson has made some phases of the legislative treatment of the Jews during Schacht's ministry the subject of his cross-examination. The questions asked and answered herein are irrelevant according to the Charter and the previously mentioned authentic interpretation of this part of the prosecution by Justice Jackson. The anti-Semitic legislation of the Third Reich and the personal attitude toward it of an individual defendant is, according to the Charter, relevant in these proceedings only so far as they are connected with other crimes, which were committed according to the Charter, as for example the conspiracy to wage war, the exterminations, and so forth. According to the Charter they cannot be an offense in themselves, nor even one against humanity. Only those defendants are punishable for their deeds who can be proved to have participated in the planning of a war of aggression and its inhuman consequences against the Jews. A prerequisite for their conviction, however, is that they recognized and desired this goal and its result.

There is no purely objective responsibility for the final result of an action (Erfolgshaftung) in criminal law. According to the Charter, that man is punishable who desired war and also the inhuman actions connected with it, but the incriminating activity must always have occurred within the scope of carrying out such a plan. This purely legal view in itself excludes the conviction of Schacht because of atrocities against the Jews.

A discrepancy between the prosecution, especially between the statements of Justice Jackson and myself, must likewise be clarified at this point, otherwise we will be talking at cross purposes. During the testimony Justice Jackson has repeatedly pointed out that the defendant is not being charged with anti-Semitism as such, that he is not being charged with his opposition to the Versailles Treaty, that he is not being charged with his ideas and statements on the so-called Lebensraum problem, and, thus the food problem of the Central European nations, that he is not being charged with his colonial aspirations, but that on the contrary he is being charged with all this only to the extent that it has served, with his knowledge and desire, for the preparation of a war of aggression. With this objection Justice Jackson tried to cut short certain questions and discussions.

This would have been justified and I could now omit such arguments, if the Prosecution would not take with one hand all it gives with the other. Because with this other hand, the course of argumentation, everything, namely his alleged anti-Semitism, etc., is used as indirect proof and evidence that Schacht had prepared and desired this war of aggression. The Prosecution does not count all that as a criminal fact in itself, but as indirect testimony, as evidence. Therefore in its valuation as evidence I must take these problems into consideration. The Jewish question has, I think, been dealt with. In the problem of vital space (Lebensraum) I can only refer, in order to save time, to what Schacht, during his interrogation, has stated for justification of his statements and activities. The colonial problem was the subject of cross-examination by Justice Jackson inasmuch as he tried to prove by his representations and questions that colonial activity by Germany was impossible without world domination or militarily prepared command of the seas at least. The further development of this idea would result in the defendant Schacht being charged with the fact that his struggle for Colonies logically implied the planning of a war of aggression. This is a wrong inference. I think that Justice Jackson's conception of Colonial Policy is too imperialistic a one. Whoever desires colonies for his country without dominating the world or at least the sea, starts out with colonial aspirations under the supposition of a lasting state of peace vis a vis the stronger seapowers.

He must believe in peace with those powers. Germany had also possessed Colonies from 1884 until the First World War. Her Merchant Navy tonnage carried on the necessary traffic with these colonies. Her prewar Merchant Navy tonnage would have also been sufficient. Air communications, in reply to Justice Jackson's question, would not have been needed. Nothing supports the presumption that by his desire for colonies, Schacht would have aimed at a removal of foreign naval supremacy by war. Concerning his general conduct one can hardly take him for so foolish. France and Holland likewise possess colonies, but certainly do not control the sea routes. This representation of the prosecution is indeterminative. The Tribunal moreover knows well, that during the years before this war nearly all the statesmen of the victorious powers have proved sympathetic to these colonial aspirations of Germany as shown in many public speeches.

I would now refer to the subject of rearmament, i.e., to the activity of Schacht in his capacity as President of the Reichsbank and Reich Minister of Economics until 1937, i.e., until a date when he had changed from a loyal servant of Adolf Hitler to a traitor against him, and when he chose the dark ways of tricks and dissimulation coupled with preparatives for murder.

The prosecution applies the violation of the Versailles Treaty, the Locarno Pact and of other treaties as indirect proof, as evidence of his aggressiondolus. This first involves the question whether in general any objective treaty violations took place and whether, in the affirmative case, these treaty violations must be looked upon as indicatives of an aggressiondolus in the person of a member of the Reich Government, i.e., also in the person of

Schacht. It is impossible and also unnecessary to exhaust within the framework of this pleading the problem whether and how far treaty violations were committed. Only a short remark may serve to prove at least the problematical solution of this question. This again is important for subjective estimation. There are no external treaties in the domain of civil jurisdiction and still less in the domain of international law. The clausula rebus sic stantibus plays a much more important role in the domain of international law, i.e., in the political intercourse between nations, than in the lawful intercourse between individuals.

One has to be very careful not to adapt the principles of the low level of civil law to the high and wide domain of the International jurisdiction. The international law has its own dynamics. The highly political intercourse between nations is subject to other juridical aspects than the commercial and personal intercourse between individuals. The most striking proof of the correctness of this thesis is the juridical argumentation of the bill of indictment, so far as it deals with the sentence "nulla poena sine lege poenale" and demands the individual punishment of the leading statesmen of an aggressor nation instead of the issue of sanctions. Particularly the man who affirms the conception of the prosecution in this respect, thus acknowledges the dynamics of international law and the fact, that international law develops in accordance with its own laws.

History has taught that treaties according to international law do not come to an end by a formal repeal but die in the course of the evolution of facts. They die out necessarily by themselves. In individual instances one might be of a different opinion whether this is the case. But it does not alter the accuracy of this established fact. The remilitarization of the Rhineland and also the introduction of general conscription, the extent of rearmament, the voluntary "Anschluss" of Austria to Germany approved of and aimed at by Schacht, certainly are offenses against the meaning and text of the above mentioned pacts, particularly the Versailles Treaty. If such violations are only answered by formal protestations, whilst very friendly relations continue, yes even honor is shown to the offending nation, if agreements are concluded which alter the principal perception of such a treaty, as for instance the Naval Pact with Great Britain, one can very well advocate the opinion that by such facts a treaty slowly becomes obsolete and extinct, that such a subjective point of view at least finds it justification. I beg to consider that the principal presupposition for the conclusion of an armament pact, as for instance the Naval Pact with Great Britain, is the recognition of the military sovereignty of both nations. The latter being denied to Germany was one of the main points of view of the Versailles Treaty.

I will not speak here about the justice or injustice of this treaty. I know the Court's wish or rather prohibition in regard to this matter, and of course I shall bow to it. But I must and I may speak about the legal possibility and therefore the innocence, criminally speaking, of Schacht's subjective opinions on the question of treaty violation. Even if therefore one wished to defend the point of view that the said treaties have not become obsolete, one cannot, as far at least as its honesty is concerned, doubt the subjective justification of a contrary opinion. But if this is answered in the affirmative, these treaty violations are no longer any proof of the criminal intention of a war of aggression. But that is the only point in question. For the violation of treaties as such is not yet considered by the Charter as a punishable act. Here also Schacht can justify his honest belief by reference to similar ways of considering the question by foreign statesmen, in the case of which the suspicion of a German will for aggression is therefore as a matter of course logically excluded from the very beginning. Here again I must limit myself to a few instances, as a complete enumeration would exceed the time limits of this plea. The first of the violations of the Versailles Treaty is supposedly the re-introduction of general military service. The British Foreign Minister Sir John Simon, with a statesman's far-sighted objectivity, as reported by the press and by wireless-broadcasts, and therefore universally known, and consequently of value as legal evidence, replied to these measures as follows:

"There is no doubt that it had been expected that upon the forced disarmament of Germany, a concerted reduction of the armaments of other big nations would follow." These remarks contained a confirmation of the juridical point of view I developed a while ago, in spite of the blaming of Hitler's action that followed them. The same applies to the fact that the visit of Sir John Simon and Anthony Eden to Berlin took place eight days after this so-called treaty violation, namely on 24 March 1935. It would not have taken place, if this measure of Hitler's had been considered abroad as a militarily aggressive one. As you also know, I may only make a short reference to the history of the discussion of this question at the Council of the League of Nations, as it is well-known. Should Schacht, as a German and a German Minister, judge it in a different manner to that of the foreign government?

A second violation of the treaty was the occupation of the Rhineland, also in March 1936. This action was not a breach only of the Treaty of Versailles, but also of the Locarno Pact, that is of an undoubtedly voluntarily contracted treaty. Two days later Mr. Baldwin stated in the House of Commons, in a speech made public and therefore of value as legal evidence, that, while the way Germany acted could not be excused, there was no reason to assume that this action contained a menace of hostilities. Was the German and German Minister Schacht to take a more sceptical attitude in regard to the aggressive significance of the act than foreign countries? And in particular when he was forced to register the fact which also belongs to history and is universally known, that 10 days after this breach of treaty the Locarno Powers, apart from Germany, submitted to the Council of the League of Nations a Memorandum proposing the reduction of the number of German troops in the Rhineland to 35,000 men, and wishing only to avoid the strengthening of the SA and SS in the Rhineland, and likewise the erection of fortifications and aerodromes. Should this Memorandum not be interpreted as a ratification of an alleged breach of the treaty? A third breach of the treaty was the fortification of Helgoland, which was hardly noticed by the contracting parties and called forth from Eden, in a historical public speech to the House of Commons on 29 July 1936, merely the remark that it was not considered appropriate to increase the difficulties of the debate by individual questions like the foregoing. Was the German Minister Schacht to take up another and sharper attitude? And what about the terrorist annexation of Austria in March 1938, when moreover Schacht was no longer Reich Minister for Economy? Had foreign countries gathered from this action the conviction that Hitler was preparing a war of aggression, they would not have renounced the use of force. Should the German Minister Schacht hold a different opinion and act accordingly? He already held it and was already eagerly at work with Witzleben and others to eliminate Adolf Hitler and his regime by means of a revolt. The efforts of these patriotic conspirators were however frustrated, according to the unequivocal testimony of witness Gisevius, because Hitler was able to register one success after another in external politics.

I will only recall the unequivocal evidence of Gisevius regarding the effects of the Munich Agreement on the striking power of the opposition group working with Schacht. I will recall the evidence of Gisevius regarding the warnings and hints which in this connection were sent beyond the German frontiers to responsible personalities of foreign countries. Is it fair to require from the German Minister Schacht a more critical attitude in respect to these political developments than that taken by foreign countries, the interests of which had been injured? He had, as we know from

Gisevius, and also from Vocke and all the affidavits submitted, —had a far clearer opinion after 1937 in which year he began treading the dark ways of a conspirator. I will recall his first contacts with the then General von Kluge. I could multiply examples such as those just mentioned. I do not criticize this attitude of foreign countries, it is not my business, quite apart from the fact that I have a complete understanding for this responsibly conscious pacifist attitude resulting therefrom. It is, however, my duty to point out that no warlike intention can be imputed to Schacht or account of his opinions and attitude, when the same opinions and attitude can be identified in the affected foreign countries. If foreign countries could entertain the hope of further maintaining friendly relations with Hitler, the same right must be conceded to Schacht, as long as he claims the same right. He does not claim it for himself at least after the Fritsch crisis of 1938.

From then onward he had, as foreign countries had not, clearly perceived the danger. This, according to the evidence of Gisevius, is undeniable, and he personally did all he could at the greatest risk of liberty and life, to maintain peace by attempting to overthrow Hitler. That all these revolts before the war and after outbreak of war were unsuccessful cannot, according to all the evidence submitted be imputed to him as his fault. The responsibility for the failure of this German resistance movement does not lie with itself, but somewhere else within and without the German frontiers. I shall revert to this later.

There remains therefore the fact of rearmament as such. Here also I can refer to the statements Schacht made for his justification during his examination. This was exhaustive and a repetition would be superfluous. It is therefore also superfluous to enter into an academic discussion as to whether Schacht's views were right, that is, to say whether it is right that a certain amount of military force sufficient for defensive purposes was necessary for any country, and particularly for Germany, and whether his opinion was right, that the non-fulfillment of the obligation to disarm by the parties to the Versailles Treaty justified the rearmament of Germany. The sole question in point is whether these opinions and motives of Schacht were honest or whether he pursued secret aggressive intentions under cover of these defensive armaments. But nothing can be confirmed against the honesty of these opinions, of course it can be contended whether the proverb "si vis pacem para bellum" has an immediate validity or whether objectively any strong rearmament does not carry an inherent danger of war, since good armies with competent officers naturally strive for possibilities of active service. Of course the thesis can be defended that moral strength is stronger than any armed strength. The cohesion of the British Empire and the world-wide influence of the Vatican's foreign politics could here be cited as proof. All these questions carry a certain relativity in themselves. At any rate one thing is certain, and it is that in all large countries of the world the warning is always and always renewed that one must be militarily strong to preserve peace. Nations whose individualism and love of liberty rejected universal defensive service and a strong standing army now do the contrary and believe honestly to serve peace thereby. Let us take as an example a nation whose love of liberty nobody in the world, even the most mistrustful can question, viz., Switzerland. Even this peace-loving nation has always taken pride in maintaining the defense capacity of its people just in order to protect its freedom and independence in a peaceful manner. One may academically call this idea of discouraging foreign aggression by the maintenance of a sufficiently strong defensive army imperialistic. It is at any rate honestly entertained by peaceful and liberty-loving nations, and perhaps serves the cause of peace more effectively than many so-called anti-military or pacifist doctrines. This reasonable point of view has really nothing to do with militarism. He who still to-day recognizes it as justified for great and small nations may not contest the honesty of their representation by Schacht in the years 1935 to 1938. I have no more to say about this.

I also need not give a wearisome enumeration of figures and make technical statements, that this part of rearmament which Schacht first financed with 9 milliard and then reluctantly with a further 3 milliard was by no means sufficient for a war of aggression, not even for an effective defense of the German frontiers. The answers that the witnesses Keitel, Bodenschatz, Milch, General Thomas, Kesselring, etc., have made to this in their depositions and affidavits, are available and have been submitted or have been officially brought to the knowledge of the Tribunal. In this respect they are unanimous that Germany even at the outbreak of war, i.e., one and a half years later, was not armed sufficiently for an offensive war; and that therefore it was not only a crime against humanity but also against his own people, confided to his leadership, if Hitler led this people in August 1939 into a war of aggression.

I therefore also consider it superfluous to make longer statements, if Blomberg's statement is correct that Schacht was aware of the progress of rearmament or the statement of Schacht and Vockes that this was not the case. I admit without further discussion the bona fides of Blomberg's statement. But as he had more to do with the technical side of rearmament than the Reichsbank, personal experience shows, that the memory of Schacht and Vockes is more reliable on this point than Blomberg's to whom this report to the Reichsbank was a matter of secondary importance for his department. For the Reichsbank, the desire to be informed about the technical progress of the armament and not only about the financial expenditures was a very important thing. One remembers such facts more reliably than unimportant, secondary matters. In any case it is established that until the budget-year 1937–38 only 21 milliard were spent for armament, of which 12 milliard were financed by credits of the Reichsbank and that according to Jodl's statement of June 5th, on 1 April 1938 only 27 to 28 divisions were ready, whereas in 1939, however, there were already 73 to 75 divisions. It needs no expert to show that volume of expenditures and armament on April 1st was entirely insufficient for a war of aggression. Hitler indeed was also of the same opinion when, in his memorandum of August 1936, which has been submitted to the court, and which was handed over to Speer in 1944, he pointed out, along with many disapproving remarks about Schacht's economic leadership, that four precious years had gone by, that one had had time enough in these four years to determine what we could not do and that he was hereby ordering that the German army would have to be ready for action in four years, and so in the course of the year 1940. I recall to the memory of the court, that after Schacht's withdrawal as president of the Reichsbank 31½ milliard were spent on armament during the two budget-years 1938–39 and 1939–40. The issuing and expenditure of money on armament therefore went on without Schacht, too, and, indeed, to an even more considerable extent. At that time, Schacht had written to Blomberg that he couldn't produce money out of the air.

He exercised a constant pressure on Blomberg along this line. I now refer to his letter to Blomberg of 21 December 1935 which has been submitted to the court. He exercised a restraining influence by means of explanatory lectures to officers of the war ministry and of the Armed Forces Academy. He refused the railway loan of 1936 presented by the Minister of Communications, which was indirectly in the interest of armament and stopped the credits of the Reichsbank as early as the beginning of 1937 by making a compromise on the final 3 milliard. He refused the credit which the Reich Finance Minister requested from him in December 1938.

He created an automatic brake for the armament expenditures through the Mefo bills, which from the technically financial point of view was a rather bold measure, but still legally tenable. These served first of all to finance the armament expenditures, but restricted further armament expenditures after their expiration on 1 April 1939, because the Reich was bound to honor them. Schacht's foresight proved true. The increase in employment brought such a rise in the state revenues, that it would not have been difficult to liquidate the Mefo bills at their expiration after 5 years. Keitel's statement has proved that during the budget year beginning 1 April 1938, five milliard marks more were spent for armament than during the preceding year, although after 1 April 1938 the Reichsbank credits had completely ceased. Half of these 5 billions would have sufficed to honor the Mefo bills which matured during the budget year beginning 1 April 1939. This money would have been saved from further armament. But this was exactly what Schacht intended. From the beginning he had limited the validity of the Mefo bills to 5 years; he stopped the credit assistance of the Reichsbank on 1 April 1939 in order to limit the armament. It was impossible for Schacht to foresee that Hitler would simply break a strict credit obligation and not pay the bills. These facts in themselves show that his attempts to resign could have had no other reason than opposition to any further armament and the refusal to accept responsibility for this. In this sense, the assertion of the prosecution that he wanted to evade responsibility, is completely correct.

Nothing shows that any other motives which necessarily appear from the facts just mentioned caused him to make this endeavor to relinquish his duties. If the prosecution says that the reason was his antagonism to Goering, this is also right so far as Schacht was an opponent of the Four-Year-Plan, of which Goering was the chief. That the reason was a rivalry of power is a pure supposition, an interpretation of the actual events, which justifies the quotation: "Interpret to your heart's desire, because if you do not interpret, you are just quoting someone else." The Reichsbank's memorandum of November 1938 which led to the dismissal of Schacht and most of his collaborators, including Vocke, is also unequivocally and forcibly opposed to armament. It naturally had to contain a justification which was derived from the departmental jurisdiction of the Reichsbank. Its aim was generally known. Hence Hitler's remark: "This is mutiny." The memoire ends with the demand for the capital and loan market, as well as the management of taxation, to be controlled by the Reichsbank. Compliance with this demand would have taken away from Hitler every possibility of raising money for further armament. This demand was, therefore, unacceptable to Hitler. Schacht and his colleagues knew this. Accordingly, they deliberately sought a break by this step. Schacht now bore no responsibility. From now on Schacht could devote himself exclusively to the plans for a coup d'etat by the conspiratorial group to which he belonged. He became a traitor to Hitler. By remaining minister without portfolio, he hoped to learn about events for the aims of his conspiratorial group than if he resigned altogether. I shall return to this point later.

The fact of the armament, as such, therefore proves absolutely nothing for the assertion of the prosecution, that Schacht deliberately contributed to the preparation of war of aggression. Such a conclusion is no less grotesque, as I must constantly repeat, than the comparison already often cited between the automobile manufacturer and the taxi driver.

Simultaneous economic armament, however, belongs of necessity to armament in the modern sense. On the German side, this was already recognized for the first time at the beginning of the first World War, and even by two very important German Jews, namely the founder of the Hamburg-America Line, Albert Ballin, and the great German industrialist Rathenau. It is this same Rathenau, who made that wonderful speech on peace during the Conference at Genoa, surrounded by the wild applause of those very Powers which had opposed his country but four years previously as enemies, and as the German Foreign Minister, who fell as a sacrifice in the beginning of the twenties to an anti-Semitic outrage. I may presumably suppose the personality of Albert Ballin to be known to the Court. Both men recognized already at the start of the first World War the error of a discontinued economic mobilization. Rathenau then organized the so-called War Raw Materials Department of the War Ministry. The first Plenipotentiary for War Economy, since this is all he was, therefore was idealogically a pacifist.

Since this time, there will at least be no mobilization plan by any nation, which does not allow purely military armament to be accompanied by a corresponding economic preparation for war. Therefore the creation of a General Plenipotentiary for War Economy, even if he had never become effective, which, as the evidence demonstrated most convincingly, he never did become, but remained a dummy—was never a proof of the intention to wage a war of aggression, this post being necessary for any armament for defense. This office is also necessary for all defensive armament. This same applies to the institution of the Reich Defense Council, the Reich Defense Committee, etc. As such they are the same harmless self-explanatory factors. Only their misuse for the purpose of a war of aggression would be incriminating. For this, however, the dolus of Schacht has not been established. I therefore refrain from evaluating the details in this field.

Finally and at last the Prosecution sees something incriminating in the so-called maintenance of secrecy regarding certain mobilization measures and mobilization arrangements, as for example the maintenance of secrecy concerning the second Reich Defense Law. In this case also a natural worldly way of thinking relieves these findings of any incriminating character. All nations are accustomed to carry out mobilization and armament measures in "secret." In thinking this over more closely and from closer observation this practice can be recognized as quite superfluous routine matter. Only drafts and technical details can be really kept secret. The fact of rearmament as such can never be kept secret. The same applies to the existence of a large body which is to serve the purpose of this rearmament. Either this becomes known when it starts functioning, or, like the ominous Defense Council it remains hidden and secret only because it does not function.

In the memoirs of a Tsarist officer regarding his experiences in the Russo-Japanese war I found the humorous description: "If I, as a member of the General Staff, wished an incident to become known, I had it classified as "secret" and my wish was fulfilled. If I had the wish, so difficult to carry out, to keep something secret, I unobtrusively sent it unstated and at times my wish was fulfilled." One must not quibble in a vacuum, but, if one wishes to seek the truth, one must consider the basis of experience of the hard foundation of facts.

In this way the fact of the military activation of Germany after the seizure of power by Hitler and the subsequent rearmament was never a secret to the world. The main proceedings have brought much evidence to this effect. We know the report of Consul-General Messersmith, we know his sworn testimony of 3 August 1945, submitted by the Prosecution under 2385–PS, according to which the armament program—he speaks of a giant armament program immediately after the seizure of power—and the rapid development of the air program had been apparent to everybody. It had been impossible to move in the streets of Berlin or in any other city of importance in Germany without seeing pilots or aviators in training, and who expressly states on page 8 of this testimony, that this giant German rearmament-program was never a secret and was publicly announced in the spring of 1935. I recall amongst much other evidence the remark of Ambassador Dodd, where he wished to point out to Schacht, that the

German Government had bought high-grade war planes from American airplane-manufacturers alone for one million dollars and that they had been paid for in gold. If Ambassador Dodd has perhaps made a mistake in this detail, yet all this still proves that German rearmament the extent of which was surely overestimated even at that time, must have been at the very best an open secret. Therefore it is not even necessary to refer to mutual visits of the general chief of staffs, to which von Milch and Bodenschatz testified the visits of the British Intelligence Service Courtney, the permanent presence of military attaches of nearly all the countries in Berlin, to recognize that the so-called secret rearmament was a public one which only safeguarded a few technical secrets like every rearmament in every State. The outside world knew the existence of this rearmament, and held it as endurable in any case for the preservation of world peace longer than Schacht did.

It is not my privilege and I have not the remotest intention to criticize the attitude of the outside world. Each part played in life has its own laws of tact, even the part played by the defendant and his defense counsel. Their task is the defense and not the blame and the attack connected with it. I want to take precautions explicitly against a misunderstanding that I intend to appear as an accuser or critic in any way. I only present all this from the viewpoint that the indirect evidence submitted by the prosecution is not valid.

The prosecution argues furthermore with the fact that Schacht was a member of the Reich Cabinet, and this from the time of his dismissal in January 1938 as Minister of Economy, at least as Minister without portfolio until January 1943. The prosecution makes the Reich Cabinet responsible for the belligerent invasions of Hitler, namely as criminally responsible. This argumentation has an attractively convincing power on somebody who reckons with the normal concept of a Reich Cabinet. This effect disappears once it has been ascertained that the so-called Reich Cabinet was not such in the usual sense of a constitutional State. Penal judicial establishments must not, however, be based on outward appearance and form, on a fiction, but only on actually established conditions. This makes it necessary to penetrate sociologically the nature of the Hitler Regime, and to examine if a member of the Reich Cabinet, hence of the Reich Government, as such in this his capacity has to bear the same criminal responsibility as if he was in another normal State structure, be it now a democratic republic or a democratic monarchy or a constitutional monarchy or an absolutistic, but nevertheless rightfully in the State established monarchy or some other state legal structure which bears the character of a somehow lawful legislative State. We can therefore not omit to fathom the actual sociological structure of the Hitler regime. We have heard excellent and profound explanations in this connection from the mouth of Professor Jahrreiss. Here, too, I want to avoid repetitions and only to quote the following in abbreviated form:

I want to say first of all, in order to avoid again the danger of a misunderstanding, that, if I speak here about the Hitler Regime, I am doing this without any connection with the persons sitting in the defendants' docks, naturally with the exception of Schacht. For the latter, I am doing this in the negative sense, that he did not belong to the Regime as such, in spite of the fact that he was a member of the Reich Government and president of the Reichsbank. I leave the question completely open as to whether either of the other defendants should be considered a member or supporter of the regime. That question is subject only to the judgment of the Tribunal and its valuation by the respective competent defense counsel.

Already at the beginning of my argument I indicated that even for someone who lived in Germany during the Hitler Regime it is difficult between the seeming and the apparent distribution of power and the actual influences of this power; but that this is bound to surpass the ability to judge of people who lived outside of Germany, and only be made possible through findings obtained the presentation of evidence before this Tribunal. We have established here that the Reich Cabinet which Hitler termed a club of defeatists was convened for the last time in 1938—and that only for the purpose of receiving a communication from Hitler—; and that it met for the last time for deliberation and to make decisions in 1937 and that Hitler intentionally withheld all matters of political importance from the Reich Cabinet, as is also brought out by the so-called Hossbach Minutes of 10 November 1937. During this meeting the Fuehrer called the attention of those present (Schacht, of course, was not present and did not learn about the Hossbach Minutes until he came here) that the subject matter of the meeting was of such great importance that it would result in full Cabinet meetings in other countries, but that just because of its great significance he had decided not to discuss the matter within the circle of the Reich Cabinet.

After that, and certainly after at least 1937, the members of the Reich Cabinet can no longer be considered the architects and supporters of the political aspirations of the Reich. The same holds true for the members of the Reich Defense Commission, which in itself was nothing but a bureaucratic routine affair. Because of this Hitler also in the spring of 1939, explicitly excluded the Reich Defense Commission from further war preparations in the following words: "Preparation takes place on the basis of peace legislation."

Despotism and tyranny had reached their purest form in 1938. It is a characteristic specific of the Fascist as well as the National-Socialist regime to concentrate formation of the political will in the head of the Party, who, with the help of this Party, subjugates and masters this Party and State. Justice Jackson too recognizes this when he stated on 28 February 1946 that the apex of power existed outside of the State and in a power group outside the Constitution. To speak in the case of such a regime of a responsible Reich Government and of free State citizens, who through various organizations could exert influence on the formation of political will, would mean proceeding from entirely wrong hypotheses. Only inconceivable greatness always gains irresponsible influence on the head of State and Party in such regimes. The formation of the political will can be recognized in its crystallized form only in the head of the State himself; near to him and behind him it becomes opaque. It is another characteristic of such a regime—and again this belongs to the chapter of its inner untruthfulness—that behind the facade of seemingly absolute harmony and union, several power groups fight each other. Hitler not only condoned such contrasts, he even encouraged them and in part used them as a basis for his power.

If any of the defendants spoke here of the unity of the German people during the war in contrast with the First World War, I, on the contrary wish to stress that hardly at any time during its history was the German nation so torn internally as it was during the Third Reich. The apparent unity was merely the stillness of a churchyard enforced through terror. The conflicts between the individual high functionaries which we have here reflect the inner strife-torn condition of the German nation, hidden artificially only through the terror wielded by the Gestapo.

To give only a few examples, we were confronted here with the conflicts between Himmler and Frank, between Himmler and Keitel, between Sauckel and Seldte, between Schellenberg and Canaris, between Bormann and Lammers, between SA and SS, between Wehrmacht and SS, between SD and Justice, between Ribbentrop and Neurath, and so forth. The list could be continued as desired. Even ideologically the Party in itself was divided into strongly pronounced contrasts which became clear already at the very beginning of the presentation of evidence from Goering's testimony. These contrasts were fundamental, and they were not bridged by Hitler but rather deepened. They were the keyboard of his source of power on which he performed. The Ministers were not responsible governing persons such as any other State where law is the foundation; they were nothing but employees with specialized training who had to obey orders. If a specialist such as Schacht did not wish to submit to this, it resulted in conflict and resignation from his department, as happened in his case.

Ministers could not in the long run take full responsibility for their department because they were not exclusively competent for it. A Minister, in accordance with Constitutional Law must, first of all also have access to the Chief of State, and he must have the right to report at any time. He must be in a position to reject interference and influences by a third irresponsible Party.

None of these characteristics typical for a Minister apply to the so-called Ministers of Adolph Hitler. Schacht was surprised by the Four-Year-Plan. Similarly, the Minister of Justice was surprised by such extremely important laws as the Nurnberg Decree. The Minister was not in a position to appoint his staff independently. The appointment of every civil service employee needed the consent of the Party Chancellery. Meddling and influence by all possible agencies and persons of the various Chancelleries—Chancellery of the Fuehrer, Party Chancellery, etc. — asserted themselves. They, however, were Agencies placed above the Ministries and they could not be controlled. Special deputies governed through the departments. Ministers — yes, even the Chief of the Reich Chancellery as we heard from Lammers—had to wait for months for an audience, while for Messrs. Bormann and Himmler it was a coming and going to and from Hitler all the time.

The Anticamera and Camarilla, an indispensable accessory of all absolutism when it comes to the personal responsibility of the individual, as well as regards the circles of which they are composed, have at all times been difficult to comprehend. They are not the irresponsible influences exerted over Hitler and affecting him.

Jodl described to us here, how Hitler's spontaneous actions having the most serious consequences, could be traced back to influences of that type, through entirely obscure third persons, due to mere accidents, conversations at a tea party, etc. For the objective facts this bears out what I already mentioned in the beginning. The very fact of the existence of such conditions eliminates even the possibility of the planning of a crime, such as a war of aggression, within a clearly defined circle of persons or, for that matter, within the so-called Reich government. But where there is no planning possible, there is also no plot possible, no conspiracy, of which the most striking characteristic is the common planning though with various roles. Let us assume the most widely conceived interpretation of the public fact of the conspiracy. I am following Justice Jackson. He who takes part in a counterfeiters' plot is guilty of conspiracy, even though he may have written only a letter or acted as bearer of the letter. He who participates in a plot for robbing a bank is guilty of murder if, in the wake of the planning, a third party in the group of planners committed murder. At all times, however, the prerequisite is a body of persons capable of executing a common plan. Such a thing was not possible for Adolf Hitler's Ministers; it was not possible at all under Hitler. From this it follows that no plotters could participate in the crime of having forced upon his own people and the world a war of aggression except those who served Hitler as assistants.

The power situation of the Third Reich as depicted thus permits in thesis only the assumption that there was punishable accomplicity or punishable assistance but on the other hand no punishable group offense such as conspiracy. Whether such accomplicity or such punishable aid in the crime of a war of aggression undoubtedly committed by Hitler exists for the individual defendants personally can only be investigated and decided in every case individually. To investigate this is my task only for the person of Schacht.

A collective crime such as conspiracy ("conspiracy",) on the basis of the actual conditions already established is however excluded as inconceivable and unrealizable. But even if this were not the case, the subjective aspect of the deed is completely lacking in the case of Schacht. Even when the objective facts of a conspiracy exists within a circle in the prisoners' dock, and even with the most liberal interpretation of the concept of conspiracy, the conspirator must accept a plan of conspiracy and the aim for conspiracy in his volition, at least in the form of the dolus eventualis. The severity of the existence of a conspiracy derives most significance from comparison with a pirate ship. In the abstract every crew member of the pirate ship, even in a subordinate position, is an outlaw. But someone who did not even know that he was on a pirate ship, but believed himself to be on a peaceful merchant vessel, is not guilty of piracy. He is also innocent if after realizing the pirate character of the ship, he has done everything to prevent the execution of piracy as well as to leave the pirate ship.

Schacht did both. As far as the latter is concerned, scientific theory on conspiracy also recognizes that he is not guilty who has withdrawn from the conspiracy by a positive act before attainment of the goal of the conspiracy, even in case he cooperated previously in the preparation of the plan for conspiracy as was not done by Schacht.

In this connection, I also consider in my favor Mr. Justice Jackson's answer when I put up for discussion within the compass Schacht's interrogation whether the persecution of the Jews is also charged to Schacht. Mr. Justice Jackson affirmed this in case Schacht had helped prepare the war of aggression before he withdrew from this plan for aggression and its group of conspirators and went over unreservedly to the opposition group, that is to the conspiracy against Hitler. This desertion would then be the positive act mentioned by me above whereby a person at first participating in a conspiracy could separate himself from it. But in the person of Schacht it is not a question at all of this legal problem because the evidence has shown that he never desired to participate in the preparation for a war of aggression. As already explained, this accusation of the subjective fact of the conspiracy has been proved neither by direct nor by indirect evidence. For the events until the year 1938, I can point to the statements made previously. From 1938 on at the latest, it has been proved that from this time on Schacht waged the most conceivably severe battle against any possibility of war in such a form that he attempted to overthrow the carrier of this danger of war, the carrier of the will for aggression and thereby the regime.

It is here completely irrelevant and is beside the point whether or not these putsch attempts which continued during the war at shorter or longer intervals were suitable to achieve for Germany a better conclusion of the peace.

This is absolutely meaningless for the evaluation as a crime of Schacht's course of action. It is beyond doubt that, according to human reckoning to a successful putsch before the outbreak of war would have prevented the outbreak of war, and that a successful putsch after the outbreak of war would at least have shortened the duration of the war. Therefore, such sceptical considerations about the political value of these putsch attempts do not render any proof against the seriousness of putsch plans and intentions. These are all that counts. For they prove first of all that one who has been pursuing them since 1938 and (if one thinks of the attempt with Kluge), even since 1937, could impossibly have had warlike intentions. One does not try to overthrow a regime, because it involves danger of war, if one has oneself worked for the war previously. One does this only if by all one's actions, even that of financing armament, one wishes to foster peace. For this reason, these proven repeated putsch attempts on the part of Schacht do not perhaps have the legal significance of a so-called active repentance for a previously shown criminal behavior, but they are ex post proof that he cannot be accused even before 1938 of consciously working for war, because the latter is logically and psychologically incompatible with Schacht's activity of conspiracy against Hitler. These putsches thus prove the credibility of Schacht in respect to his representation of the reasons and intentions which caused him to enter actively into the Hitler government and to finance an armament to the extent of the financial aid he granted, namely to the amount of 12 billions. They prove ex post the purely defensive character of this financing of armament, they prove the credibility of Schacht's contention of producing besides this defensive effect tactically a limitation of armament. But if one believes this description of Schacht, then one cannot speak of Schacht's cooperation in instigating a war of aggression, at least in its subjective aspect.

This credibility is also proved by another circumstance. Schacht has contradicted the testimony of Gisevius and my questioning along the same line that he had admired Hitler at the beginning and had unreservedly considered him an ingenious statesman. He described this in his interrogation as an erroneous assumption, he said that he had recognized from the beginning many a weakness of Hitler, especially his sketchy education, and only hoped to be in a position to control the disadvantages and dangers resulting from them. By this, purely objectively speaking, Schacht hereby made his defense more difficult. He is wise enough to have recognized this. Thus what he consciously lost hereby for his defense in the technique of evidence and surrendered, he is gaining in respect to his credibility upon objective recognition of evidence based on psychological experience. For he deserves increased credibility who serves the truth by contradiction even when the suggested untruth or the half truth is more advantageous to him technically and tactically by way of evidence.

There should not exist any doubt about the participation of Schacht as a leader in the activities of the various conspiracies about which Gisevius testified precisely on the basis of the credible testimony of Gisevius. But if Mr. Justice Jackson presented in the cross examination to Schacht photographs and films which superficially document a close connection with Hitler and his paladins, then this could only have happened in order to put doubt on the seriousness of his active opposition to Hitler. I therefore must deal briefly with this photographic argument anyhow. Mr. Justice Jackson has related this accusation with another one in quoting speeches which show superficially even during the putsch period a great devotion toward Adolf Hitler. This accusation is on the same level. I believe that this argument can stand up neither before the experience of life nor before the observation of history. History teaches us that conspirators in particular, especially if they belong to the closer circle of dignitaries of the threatened head of state, show for purposes of camouflage a special devotion. Nor has it ever been observed that such people show their intentions to the threatened victim in a contradictory loyalty. One could here accumulate examples from history.

There is a really effective German drama by a certain Neumann which concerns itself with the murder of Czar Paul by his first minister Count Palen. The Czar trusts to the very end the devotion of Count Palen which is shown ostentatiously even at the time when the latter is already sharpening the murder knife. And in the historical documents left behind, there is an instruction by Count Palen to the Russian Ambassador in Berlin, very shortly before the attempt, in which Count Palen cannot do enough to speak about "Notre auguste Empereur." Significantly, this drama bears the title "The Patriot."

Thus there is a higher patriotism than purely formal loyalty of the servant of the nation. It approaches the psychological truth much more if one would utilize a presumptive devotion assumed for the sake of appearances and assurances of loyalty during this period, more in favor of the objective credibility of the description of Schacht than vice versa. As a conspirator, he had to camouflage himself especially well; to a certain degree, this had to be done by practically everyone who lived under this regime in Germany. As far as these photographs are now concerned, then these are easily a compulsory consequence of every social and thereby also socially representative membership in a body (Gremium) so that for better or for worse one becomes a victim of the camera with the members of it. When I am once a member of a government, then I cannot avoid being photographed with these people on the occasion of their meetings. Thus such pictures result as Schacht between Ley and Streicher. Viewing such pictures ex post, these pictures are not a joy to the observer; certainly not to Schacht either. But they do not prove anything. In a natural evaluation of a normal, average experience of life I consider these pictures without any value as evidence either pro or contra.

The foreign countries, too, had through their prominent representatives social intercourse with Adolf Hitler's governments, and this not only through their diplomatic corps. I wish to assure you that the defense is in a position to produce much more grotesque pictures, which do not look as natural as Schacht being photographed together with men who were his high standing colleagues in the Third Reich. To produce such pictures might not be a very tactful move of the defense. But a defense counsel must also take upon himself the odium of indiscretion, should it be necessary in order to investigate the truth in all seriousness. I do not believe that I have to do it in this case, because the irrelevance and insignificance of such presentation of evidence through pictures of representative events seems to be obvious.

The only incriminating point pressed by the prosecution which is left for me to argue now appears to be Schacht, after his retirement as Minister of Economy and still more after his retirement as President of the Reichsbank in January 1939, remained Minister without portfolio until 1943. Schacht declared that this had been stipulated by Hitler as a condition for his release from the Ministry of Economy. Hitler's signature, as head of the State, was necessary for his dismissal. Had Schacht refused to remain as Minister without portfolio, he would surely have been arrested sooner or later as politically suspect, and thus been deprived of all means of action against Hitler.

The witness Gisevius has testified as to the deliberations at that time between him and Schacht concerning the continuation of Schacht as Minister without portfolio. In these deliberations it was justly of importance, that Schacht could be of more use to the group of conspirators as a scout or a patrol, if he remained in this position, to outward appearances at least, within the Reich Government. Even as Minister without portfolio, Schacht remained exposed to great danger, as demonstrated by his and Gisevius' declarations, and as becomes obvious from Ohlendorf's statement that Schacht was already in 1937 on the black list of the State Police.

How much Hitler feared Schacht is proved by his later remarks to Speer which have been discussed here, particularly his remarks about Schacht after the attempted assassination on 20 July. I would also remind once more of the memorandum of Hitler of 1936, which he gave to Speer in 1944 and which says that he saw in Schacht a saboteur of his rearmament plans. It has been declared and proved by Lammers, that Schacht tried later on to get rid even of this nominal position. Lammers and Schacht have proved furthermore that this position was without any substantial importance. Therefore my nicknaming it "Fancy Dress Major"

(Charaktermajor), that means a major without a battalion and command authority, a sham-major. Schacht could not get rid of the position without scandal, the same as with the position of Reichsbank President. Schacht therefore had to maneuver in such a way that he would be thrown out. He succeeded in this, as I explained, as Reichsbank President, through the well-known memorandum of the Board of Directors of the Reichsbank and the refusal of credits by the Reichsbank in November 1938, contained therein. As far as his position of Minister without portfolio was concerned, he succeeded through his defeatist letter of November 1942. In the meantime he made use of the time for the attempted "coup d'etat" in autumn 1938 and for the various other attempted "coups d'etat" until 20 July 1944, the last one landing him in a concentration camp.

A criminal reproach can on no account be made him in his position as Minister without portfolio. For his proved conspirational activity against Hitler during all this time, eliminates offhand and logically the supposition that he had furthered Hitler's war plans and war strategy during this time. There remains only space, and this also only in the vacuum of abstraction, for a political reproach against the Schacht of the years 1933–1937. But this, too, is compensated by the extraordinarily courageous attitude of Schacht after this period. In order to obtain the just appreciation for fact, may I remind you of the interesting statement of Gisevius, that he, who had looked with a certain scepticism upon Schacht's original attitude, not in a criminal but political sense, had then been completely reconciled with Schacht by the extraordinary courage which Schacht displayed as opponent and conspirator against Hitler since 1938. I mean therefore that the fact of Schacht remaining as Minister without portfolio does not incriminate him directly or indirectly not according to penal law anyhow, right from the start, but also not morally, if one takes into consideration his behavior as a whole, his motives and the accompanying circumstances and conditions.

If the Prosecution now finally argues, on the basis of the text of the aforementioned memorandum of the Board of Directors of the Reichsbank, an opposition to war is not evident from the Memorandum, but only technical currency reflections, then I have only to refer in this respect to my previous statements and the testimony of von Vocke. And the presentation of facts by Schacht himself would not even be necessary to refute this argumentation. Vocke declared quite unequivocally in his capacity as closest collaborator that Schacht wished to limit and sabotage rearmament from the moment when he recognized its dimensions as a danger of war. The sworn affidavits of Huelse and the sworn affidavits of all the collaborators of Schacht in the Reich Ministry of Economy combine with this testimony of Vocke in that sense. I need not quote them individually. They are known to the Tribunal. The Tribunal does not need the commentary of a defense counsel. They speak for themselves. If the Prosecution now finally argues concerning the text of the Memorandum, which, it is true, actually only deals with financial problems, then I cannot omit the remark, that such an argumentation moves again in a vacuum, and does not take the experiences of history and the general experiences of life into consideration. Naturally—I have said it already —the Board of Directors of the Reichsbank could only operate with arguments which came under their department, particularly so if one had to deal with a Hitler. One beats the bag but one really means the donkey.

If the directorate of the Reichsbank and with it its President Schacht had not made public its true purpose in this Memorandum, namely to avert the danger of war and to combat Hitler's will of aggression, then it would have removed the effect of a specialist departmental influence from itself. Hitler very well understood the purpose of this Memorandum, when he shouted after reading it: "That is mutiny." With this Adolf Hitler recognized what can be said alone of Schacht as conspirator. He was never a mutineer and conspirator against world peace, but, so far as he was a conspirator and mutineer, he was this only against Adolf Hitler and his government.

As such, he was the subject of ironic belittling by General Jodl and my colleague Nelte in the epithets "Frockcoat and drawing-room revolutionary." Now history teaches that the quality of the tailor does not play any role in the case of the revolutionary. And as far as the drawing room is concerned, then the shacks have no revolutionary preference over the palaces. I only call to mind the political drawing-rooms of the great French Revolution or for instance (one of the many) the elegant officers' club of the feudal Preobraschenck regiment under many a Czar. Even if the Gentlemen are of the opinion that Schacht and his accomplices themselves should have done the shooting, then I can only say: Well, if it had only been that easy. Schacht would have loved to do the shooting himself; he exclaimed here spontaneously. But it would not go without power which would have pushed on during the confusion coming for certain afterward and which could bring the attempt to a revolutionary success.

Therefore generals with troops were necessary. I do not wish to repay General Jodl with the same coin and therefore do not say "a necessary evil."

The further reproach of the foundation lacking in the working class is contradicted by the social composition of the revolutionaries of 20 July. As I stated before, all this is irrelevant for the decision of this Tribunal. But my client has a moral right that his defense counsel does not completely ignore this polemic which took place in the spotlight of the world public.

In summing up it must therefore be said:

After the July elections in 1932 it was certain that Hitler would and was bound to seize power. Previously to this Schacht had expressively warned the foreign countries of this development, and therefore not contributed to it. After the seizure of power only two roads were open to him, as to every German: he either had to estrange himself or he had to enter the movement actively. The decision at these crossroads was a purely political one without any criminal aspect. Just as we respect the reasons which caused the foreign countries to collaborate with Hitler much more intensively and pro-Germanically than with the previous democratic governments of Germany, so we must recognize the good faith of all those Germans who believed themselves to be able to serve the country and humanity better because of the greater possibilities of exerting their influence within the movement, therefore, either within the Party or within the apparatus of officialdom, than by grumblingly standing aside. To serve Hitler as minister and President of the Reichsbank was a political decision, about whose political correctness one can now ex post facto argue, which however, lacked any criminal character. Schacht has always remained loyal to the motivating reason for his decision, namely to combat any radicalism from an influential position. Nowhere in the world did a warning signal appear for him. He only saw that the world trusted Hitler much longer than he himself, and permitted Adolf Hitler honors and foreign-political successes, which hampered Schacht's work, when it had already for a long time been directed at removing Adolf Hitler and his government. He led this struggle against Adolf Hitler and his government with a courage and a consequence, which must make it appear as a pure miracle that it was only after 20 July 1944 that the fate of the concentration camp and the danger of losing his head either through the People's Tribunal or through an act of the SS reached him. He is sufficiently clever and self-critical to refrain from escaping the realization that, from the purely political consideration, the picture of his character will waiver in history, or at least in the nearest future, confused by the favor and hatred of the parties. He humbly resigns himself to the judgment of history, even then, if one historian or another will label his political line as incorrect. With the pride of a good conscience he resigns himself to the judgment of this High Tribunal. He stands before his judges with clean hands. He also stands before this Tribunal with the confidence, as he has already expressed in a letter which he addressed to this Tribunal before the beginning of the proceedings, and in which he expresses that he would regard with gratitude the exposing before this Tribunal and before the whole world publicity, of his actions and activity and its motivating reasons. He stands before this Tribunal with confidence because he knows that the favor and hatred of the parties will not have any effect in this Tribunal. In all self-recognition of the relativity of all political actions in such difficult times, he is still self-cognizant and full of confidence with regard to the criminal charges which have been raised against him, and this with justification. Because, no matter who would have to be found guilty of being criminally responsible for this war and the atrocities and inhumane acts committed in it, Schacht, according to the evidence which has been kept here with minute exactness, can shout the words to every culprit, which Wilhelm Tell shouts to the Kaiser—assassin Parricida! "I raise my clean hands to Heaven, and curse you and your deed." I therefore request the findings to established to the effect, that Schacht is not guilty of the accusation which has been raised against him and that he therefore is to be acquitted.

2. FINAL PLEA by Hjalmar Schacht

My feeling of justice was deeply wounded because of the fact that the final speeches of the prosecution completely bypassed the evidence resulting from this trial. The only accusation raised against me under the Charter is the allegation that I wanted war. The overwhelming amount of proof in my case has shown, however, that I was a fanatical opponent of war, and actively and passively, through protests, sabotage, cunning, and force, have tried to prevent this war.

How, then, can the Prosecution assert that I was in favor of war? How, then, can the Russian Prosecutor assert that I turned from Hitler only in 1943, after my first attempt at a coup d'etat had already been undertaken in the fall of 1938?

And, now, Justice Jackson, in his final speech, raised a new accusation against me which has not been mentioned in the trial at all up to the present moment. I was to have planned a release of Jews from Germany against a ransom in foreign currency. That, too, is untrue, disgusted with the Jewish pogrom of November 1938, I managed to obtain Hitler's approval to a plan which was to facilitate emigration of the Jews. I intended to transfer

1,500 million Reichsmarks from confiscated Jewish property, to the administration of an international committee, and Germany was to undertake the obligation to repay this amount to the committee in twenty yearly installments, and that in foreign currency; which is the exact opposite of what Justice Jackson asserted here.

In December 1938 in London, I discussed this plan with Lord Berstedt, of Samuel and Samuel, with Lord Winterton, and with the American representative, Mr. Rublee. They were all sympathetically disposed toward this plan. Having been removed from the Reichsbank shortly thereafter, however, this matter was dropped. Had it been carried through, no single German Jew would have lost his life.

My opposition to Hitler's policies was known at home and abroad, and that so clearly that even in the year 1940 the Attache of the United States, Mr. Kirk, before leaving his Berlin post, sent me his regards, adding that after the war I would be considered as an unburdened man, a matter which is reported on in detail by witness Huelse in his affidavit, which is 37–B of my document book.

Instead of that, however, the Prosecution for a whole year has branded me in the world press as a robber, murderer, and betrayer. And it is this accusation that I have to thank for standing alone at the eve of my life without means of subsistence and without a home. But the Prosecution is mistaken if they believe, as was mentioned in one of their first speeches, that they can count me amongst the pitiful and broken personalities.

Certainly I erred politically, but my economical and financial policy of creation of work by the assistance of credit has wonderfully proven itself, although I have never claimed to be a politician. The figure of unemployment dropped from 7,000,000 to zero. In the year 1938 the income of the State had risen to such an extent that the repayment of the Reichsbank credits was fully safeguarded. The fact that Hitler refused this repayment, so ceremoniously documented by him, was a tremendous betrayal which I could not foresee. My political mistake was not realizing the extent of Hitler's criminal nature at an early enough time. But not with one single illegal or immoral act did I stain my hands. The terror of the Gestapo did not frighten me; for every terror must fail when conscience is at stake. Here lies this great source of power which religion gives us.

In spite of that, Justice Jackson considered it proper to accuse me of opportunism and cowardice. And this, after the end of the war, found me in the Extermination Camp at Flossenberg, where I had been imprisoned for ten months, and where only by merciful fate I escaped Hitler's order of murder. At the exit of this trial I stand with my soul deeply shaken about unspeakable suffering which I tried to prevent with all my personal effort and with all attainable means, a suffering which I could not prevent. But that is not through my guilt.

Therefore, my head is upright and I am unshaken in the belief that the world will recover, not through the force of power, but only through the force of mind and the morality of actions.

XIV. KARL DOENITZ

1. FINAL ARGUMENT by Otto Kranzbuehler, Defense Counsel

Mr. President, Gentlemen of the Bench:

"War is a cruel thing and it brings in its train a multitude of injustices and misdeeds."

With those words of Plutarch's, Hugo Grotius begins his examination of the responsibility for war crimes and they are as true today as they were 2,000 years ago. At all times acts were committed by belligerents, which were war crimes or were considered as such by the other side. But the conclusions drawn from this fact were always to the prejudice of the vanquished parties and never to that of the victors. The law which was applied here was necessarily the right of the stronger.

While in land wars more or less steadfast rules were drawn up regulating warfare, in maritime wars the conceptions of the parties engaged have always clashed on the point of international law. Nobody knows better than British statesmen how much these conceptions are dictated by national or economic interests.

I refer in this respect to noted witnesses such as Lord Fisher and Lord Edward Grey*. Therefore, if ever in history a naval power would have had the idea to prosecute a defeated enemy admiral, namely on grounds of his own conception of the rules of naval warfare, the sentence would have been pronounced simultaneously with the indictment.

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* Lord Edward Grey. "25 Years of Politics, 1892–1916". Translation by Brueckmann, Munich 1926. "international law has always been elastic. * * * A belligerent with an overpowering navy has always advocated an interpretation of international law, justifying the maximum seizure of goods which may presumably reach the enemy. That viewpoint was naturally taken by Great Britain and the Allies due to their superiority at sea. The British attitude in this respect has not always been the same. When we were among neutrals, we naturally contested the right the belligerents claimed for themselves to make vast seizures."

At this trial two admirals are under indictment for a naval war which has been called criminal. Thus the Tribunal is confronted with a decision regarding conceptions of law which are necessarily as divergent as the interests of a naval power from the interests of a land power. Not only the fate of both admirals is connected with this decision. It is also a question of an honorable name for hundreds of thousands of German seamen who believed in serving a good cause and do not deserve to be branded by history as pirates and murderers. It is to those men, the living as well as the dead, that I feel bound by duty when I undertake to reject the accusation against German naval warfare.

Which are these accusations? They are divided into 2 large groups—unlawful sinking of ships and premeditated killing of shipwrecked personnel.

I shall deal first with the accusation of the illegal sinking of ships.

Two reports by Mr. Roger Allen of the British Foreign Office made in the fall of 1940 and spring of 1941 form the nucleus of that accusation. I do not know to whom and for what purpose these reports were made. According to their form and contents they seem to be serving propaganda purposes, and for this very reason I believe their value as evidence to be low. Even the Prosecution submitted only part of the accusations made therein. The reports trace only one-fifth of the total of supposedly unlawful attacks to submarines whereas four-fifths are ascribed to mines, airplanes, or surface craft. The Prosecution omits these four-fifths and this reserved attitude may be explained from the fact that the use of these combat means on the British side differs in no way from that on the German side.

With regard to the commitment of submarines, there seems to exist a difference between the principles followed by the German Naval Operations and those of our enemies. At any rate, the public in enemy countries and many neutral countries believed so during the war and partly still believes it today. Propaganda dominated the field. At the same time, the mass of all critics neither knew exactly which principles were valid for German U-boat warfare, nor on which factual and legal foundations they were based. It shall be my task to attempt to clarify this.

The reports by Mr. Roger Allen culminate in the assertion that the German U-boats from the summer of 1940 on torpedoed everything coming before their periscopes. Undoubtedly the methods of submarine warfare stiffened gradually under the pressure of the measures directed against Germany. This war, however, never did degenerate into a wild shooting melee governed by the law of expediency alone. Much of what might have been useful for a U-boat was left undone until the last day of the war because it had to be regarded as legally inadmissible, and all measures which the German Naval High Command is being accused of today by the Prosecution were the result of a development in which both sides partook through measures and counter measures as in all military developments.

The London Protocol of 1936 formed the legal basis for the German submarine warfare at the beginning of this war. These regulations were literally incorporated into article 74 of the German Prize Ordinance, which even Mr. Roger Allen calls a reasonable and not inhumane instrument. As a draft this prize ordinance was sent in 1938 to the two U-boat flotillas and to the U-boat training school and served as foundation for the training of the commanders. Stopping and examining of merchant vessels was performed as a tactical task. In order to facilitate for the commander in economic warfare the quick and correct evaluation of his legal position towards a ship and the cargo of the enemy and the neutral, the prize disc was constructed which through simple manipulations indicates the articles of the prize ordinance to be applied. In so far as preparations had been made at all for economic warfare through submarines, they were based exclusively on the German prize ordinance and thus on the London Protocol.

The German High Command actually adhered to this legal foundation at the time the war broke out. The combat instructions for U-boats of 3 September 1939 ordered clearly and distinctly that submarine warfare be carried on in accordance with the prize ordinance. Accordingly sinkings were permissible only after stopping and examination unless the ship attempted to escape or offered resistance. Some examples were submitted to the Tribunal from the abundance of possible instances showing the chivalrous spirit with which the German submarine commanders complied with the issued instructions. Especially the care given to the crews of ships sunk lawfully after stopping and examination was carried out in part to an extent which could scarcely be justified on military grounds. Life boats were towed over long distances and, thereby, the few available U-boats were diverted from their combat mission. Enemy ships which could have been sunk lawfully were permitted to go free in order to send the crews of ships previously sunk to port aboard them. It is, therefore, only correct if Mr. Roger Allen stated that the German U-boats during the first weeks of the war adhered strictly to the London regulations.

Why was this procedure not kept up? Because the conduct of the enemy made such a procedure militarily impossible and created at the same time the legal prerequisites for its modification.

I shall consider the military side first. From the very day the war started, U-boat reports reached the commander of the U-boat fleet at the Naval High Command stating that hardly an enemy ship submitted voluntarily to stopping and examination. The merchant vessels were not content with their attempt to escape, be it through fleeing or be it by changing their course, to bear directly upon the U-boat thus forcing it to dive. On the contrary every sighted U-boat was reported at once by radio; and, subsequently, in the shortest space of time, it was attacked by enemy airplanes or naval forces. The complete armament of the enemy merchant vessels, however, settled the matter. As early as 6 September 1939, a German U-boat was shelled by the British Steamship "Manaar" and that was the starting signal for the great struggle which took place between the U-boats on the one hand and the armed merchant vessel equipped with guns and depth charges on the other hand, as equal military opponents.

In order to show the effect of all these measures taken by the adversary, I have presented the Tribunal with some examples which I do not wish to repeat. They unequivocally show that a further action against enemy merchant ships according to the regulations governing Prize Ordinance was no longer possible from the military standpoint and meant suicide for the submarine. Nevertheless, the German High Command continued for long weeks to proceed according to the regulations governing Prize Ordinance. Only after it was established that every time there was any action on the part of enemy merchant ships, and especially of armed action, it was not a question of an individual case of a generally ordered measure, the order was given on 4 October 1939 to attack all armed enemy merchant ships without warning.

The Prosecution will perhaps take the standpoint that in lieu of this submarine warfare against armed merchant vessels should have been discontinued. In the last war the most terrible weapons of warfare were ruthlessly employed on both sides, both on land and in the air. In view of this experience, the thesis can hardly be upheld today that in naval warfare one of the parties waging war can be expected to give up using an effective weapon after the adversary has taken measures making the use of it impossible in its previous forms. In any case, such a renunciation could only be considered if the novel utilization of the weapon were undeniably illegal. But this is not the case for the utilization of German submarines against enemy merchant shipping because the measures taken by the enemy did not only change the military situation but also the legal one.

According to German legal opinion, however, a ship which is equipped and utilized for battle does not come under the provisions granting protection against sinking without warning, as provided by the London Pact for merchant ships. I wish to stress the fact that the merchant ship is not thereby denied the right to carry weapons and to fight. From this fact the conclusion was drawn, as reflected in the well-known formula, "He who uses weapons himself must expect weapons to be used against him."

During the cross-examination the Prosecution referred to this interpretation of the London Protocol as dishonest. It admits only the closest literal interpretation and considers the sinking of a merchant ship as admissible only if the latter has offered active resistance. It is not the first time that fundamental differences of opinion exist between contracting parties with respect to the interpretation of a treaty, and the extremely different interpretations of the meaning of the Potsdam Agreement of 2 August 1945 provide a very timely example. Diversity of conception, therefore, does not allow for the conclusion that the one or the other party has acted dishonestly during the signing or the subsequent interpretation of a treaty. I will endeavor to show how unjustified this reproach is in respect also to the German interpretation of the London Submarine Protocol.

There are two concepts which are at the basis of the German interpretation, namely that of "merchant vessel" and "offer of active resistance."

If I now consider some legal questions, it will not represent a comprehensive exposé. I can only touch the problems and due to lack of time I must also limit myself when mentioning scientific sources. I shall preferentially refer to American sources, because the interests of naval strategy of this nation were not fixed to the same extents as those of the European nations and therefore its science can probably claim greater objectivity.

The text of the London Protocol of 1936 is based, as is well known, on a declaration which was signed at the London Naval Conference of 1930. The committee of jurists appointed at that time, expressed its opinion concerning the greatly disputed definition of a merchant vessel in the report of 3 April 1930:

"The committee wishes to place on record that the expression 'merchant vessel' where it is employed in the declaration is not to be understood as including a merchant vessel which is at the moment participating in hostilities in such a manner as to cause her to lose her right to the immunities of a merchant vessel."

This definition clarifies at least the one thing, that by no means every vessel flying a merchant flag may lay claim to being treated as a merchant vessel in the sense of the London agreement. Beyond this, the explanation has few positive aspects, because the question of by which kind of participation in hostilities a vessel loses her right to the immunity of a merchant vessel is again subjected to the interpretation of the individual contract parties. The London Conference, as far as I can see, did not consider this ticklish question any further and one probably does not go wrong by assuming that this astonishing reserve is based on experiences which the same powers had gathered in Washington 8 years ago.

The Washington conference of 1922 was still under the impression of the first world war and, therefore, it is no wonder that the naval power, Great Britain, which during the world war had suffered most from German submarine warfare, now tried to outlaw and abolish altogether by international law the submarine warfare against merchant shipping. The resolution named after the American main delegate, Root, which in its first part substantially corresponded to the London text of 1930, served that aim. But in the second part the Root Resolution goes farther and stipulates that any commander who, no matter whether he acted with or without higher order, violated the rules established for the sinking of merchant vessels should be punished as a war criminal like a pirate. Finally, it was recognized that under the conditions stipulated in the resolution submarine warfare against merchant shipping was impossible, and was therefore renounced altogether by the contracting powers. The Root Resolution designates these principles as an established part of international law. As such it was accepted by the delegates, but none of the 5 participating naval powers (U.S.A., England, France, Japan, and Italy) ratified it.

Apropos of the Root Resolution, however, another question was discussed, which is of the greatest importance for the interpretation of the London Protocol, namely, the definition of the word "vessel." Here the two fronts in the entire U-boat question became clearly evident. On the one side there stood England; on the other, France,[1] Italy, and Japan; while the U. S. took the position of a mediator. According to the protocol of the Washington conference the Italian delegate, Senator Schanzer, initiated the advance of the weaker naval powers by expressly emphasizing that a merchantman regularly armed may be attacked by a submarine without preliminaries. In a later session Schanzer repeated his statement that the Italian delegation applied the term of "merchantman" in the resolution only to unarmed merchant vessels. He explicitly declared this to be in accordance with the existing rules of international law.[1]

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[1] Yamato Ichihaslie, The Washington Conference and After, Stanford University Press, Cal. 1928, p.80, "The chief reason for the British plea was the apprehension of the craft in the hands of the French navy."

The French delegate, M. Sarraut, at that time received instruction from the Foreign Minister Briand to second the reservations of the Italian delegate.[2] He thereupon moved to have the Italian reservations included in the records of the session.

The Japanese delegate, Hanihara, supported this trend with the statement that he thought it was clear that merchant vessels engaged in giving military assistance to the enemy ceased in fact to be merchant vessels.[3] It can therefore be seen that in 1922 three of the five powers represented expressed the opinion that armed merchant vessels should not be regarded as merchant vessels in the sense of the agreement.

Since the whole resolution threatened to collapse because of this difference of opinion, a way out was found which is typical for conferences of this kind. Root closed the debate with the statement that in his opinion the resolution held good for all merchant ships as long as the ship remained a merchant vessel.[4] With this compromise, a formula was created which, to be sure, could represent a momentary political success, but which, however, would carry no weight in the case of war. For it was left to every participating power to decide whether or not it would grant the armed merchant vessels the protection of the resolution in case of war.

I have described these events of the year 1922 a little more in detail because the same powers took part in them as participated in the London Naval Conference of 1930. The London conference was the continuation of the Washington Conference, and what had been discussed and included in the records at the first one had its full importance for the second one. Science, too, and by no means only German but especially American and French science based its examinations on the close connection of both conferences, and it was precisely for that reason that they declared the result achieved in the question of submarines to be ambiguous and dissatisfactory. Here, I only want to point to Wilson's summarizing report on the London Naval Treaty (American Journal of International Law, 1931, p. 307).

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[1] Conference on the Limitation of Armaments, Washington, November 12, 1921 - February 6, 1922, pp.606, 688, 692.

[2] French Yellow Book, La Conference de Washington, p.93.

[3] Protocol pp. 693, 702. "He thought it was also clear that merchant vessels engaged in giving military assistance to the enemy ceased in fact to be merchant vessels."

[4] Protocol, p.704, "So long as the vessel remained a merchant vessel."

It is there in particular where, besides the ambiguity of the concept "merchant vessel," the uncertainty connected with the words "active resistance" is pointed out; and it is these very words with which an exception from the protection of the merchantman is connected, an exception which likewise is not contained in the actual text of the London agreement, but which, nevertheless, is generally recognized. I am referring to merchantmen in an enemy convoy. If the London agreement is interpreted literally, the opinion would have to be upheld that merchantmen in an enemy convoy must also not be attacked without warning, but that an attacking battleship would just have to put out of action the escort vessels first and then stop and search the merchantmen afterwards. However, this militarily impossible demand evidently is not made by the Prosecution either. It says in the report of the British Foreign Office which has been mentioned several times:

"Ships sailing in enemy convoys are usually deemed to be guilty of forcible resistance and therefore liable to be sunk forthwith."

Here even the Prosecution admits an interpretation of the words "active resistance", an interpretation which results in no way from the treaty itself but is simply a consequence of military necessity and is thus dictated by common sense.

And this very same common sense demands also that the armed merchant ship be held just as guilty of forcible resistance as the convoyed ship. Let us take an extreme instance in order to make the matter quite clear. An unarmed merchant ship of 20,000 tons and with a speed of 20 knots which is convoyed by a trawler with—let us say—2 guns and a speed of 15 knots may be sunk without warning, because it placed itself under the protection of the trawler and thereby made itself guilty of active resistance. If, however, this same merchant ship does not have the protection of the trawler and, instead, the 2 guns or even 4 or 6 of them are placed on its decks enabling it to use its full speed, should it not in this case be found just as guilty of offering active resistance as before? Such deductions really seem to me against all common sense. In the opinion of the Prosecution the submarine would first have to give the merchantship, which is far superior to it in fighting power, the order to stop and wait until the merchantship fires its first broadside at the submarine.

Only then would it have the right to use its own weapons. Since, however, a single artillery hit is nearly always fatal for a submarine, although it harms a merchant ship very little as a rule, the result would be the almost certain destruction of the submarine.

"When you see a rattlesnake rearing its head you do not wait until it jumps at you but you destroy it before it gets the chance." These are Roosevelt's words in which he justified his order to the U.S. naval forces to attack German submarines. The reason seemed sufficient to him to order the immediate use of arms even without the existence of a state of war. It is a solitary instance in war, however, to grant one of two armed opponents the right to fire the first shot and to make it the other's to wait for the first hit. Such in interpretation, however, is contradictory to any military reason. It is no wonder, therefore, if in view of such divergent opinions the experts on international law, even after the London Treaty and the signing of the London Protocol of 1936, consider the treatment of the armed merchant vessels in naval warfare to be an unsolved question. In this instance, too, I should like to point to only one scientific source which enjoys especially high authority. It is the draft of an agreement on the rights and duties of neutrals in naval warfare, an agreement which leading American professors of international law, such as Jessup, Herchard, and Charles Warren published in the "American Journal of International Law" of July 1939, simultaneously giving reasons, which furnish an excellent idea of the most recent state of opinion. Article 54 of this draft corresponds literally to the text of the London Agreement of 1936 with one noticeable exception: the term "Merchant Vessel" is replaced by "unarmed vessel." The next article then continues:

"In their action with regard to enemy armed merchant vessels, belligerent war ships, whether surface or submarine, and belligerent military aircraft are governed by the rules applicable to their action with regard to enemy warships."

This opinion is first based on the historical development. At the time when it was customary to arm merchant vessels, i. e., until the end of the last century, there was no question of any protection for the merchant vessel against immediate attack by an enemy warship. With the introduction of armor plating, the warship became so superior to the armed merchant vessel that any resistance on the part of the latter was rendered futile and the arming of merchant ships therefore gradually ceased. This defenselessness of the merchant vessel against the warship, and that alone gained for the former the privilege of not being immediately subject to armed attack on the part of the belligerents.

"As merchantmen lost effective fighting power they acquired a legal immunity from attack without warning."

This immunity was never conceded to the merchant vessel as such but only to the defenseless and harmless merchant vessel. In respect of which the American expert on international law, Hyde,[1] stated in 1922, i. e., after the Washington conference and the afore-mentioned Root resolution on U-boat warfare:

"Maritime states have never acquiesced in a principle that a merchant vessel so armed to be capable of destroying a vessel of war of any kind should enjoy immunity from attack at sight, at least when encountering an enemy cruiser of inferior defensive strength."

Legal as well as practical considerations, therefore, led the above-mentioned American authorities, after the signing of the London Agreement and shortly before the outbreak of the war, to form the opinion that armed merchant ships are not protected from attacks without warning.

Here the old discrimination between defensive and offensive armaments is also rejected as inapplicable. It is well known that the American Secretary of State, Lansing, in his note to the Allies on 18 January 1916 already took the point of view that any kind of armament aboard a merchant vessel will make its fighting strength superior to that of a submarine and that such an armament is therefore of an offensive nature.[2]

In the latter course of the world war, the U.S.A. changed its opinion and declared that mounting guns on the stern could be taken as proof of the defensive character of the armaments. This standpoint was adopted in some international agreements and drafts as well as by British jurists in particular. It does not do justice to the practice of naval warfare.

First of all, the guns on many vessels were mounted from the very start in the bows, e. g., as a matter of principle on steam-propelled fishing boats. Furthermore, the antiaircraft weapons of the merchant vessel, which were especially dangerous for the submarine, were frequently placed on the bridge, and could therefore be used in all directions. Besides which there can be no discrimination between defensive and offensive armaments on the basis of the way the weapons are placed.

In this respect, orders alone are the decisive factor and the way in which these weapons are meant to be employed. Soon after the war had started the orders of the British Admiralty had already fallen into German hands. A decision of the Tribunal has made it possible for me to submit them. They are contained partly in the "Confidential Fleet Orders" and chiefly in the "Defense of Merchant Shipping Handbook." They were issued in 1938. They, therefore, do not deal with counter measures against illicit German actions but, on the contrary, they were already issued at a time when in Germany warfare in accordance with the London Agreement was the only form of submarine warfare taken into consideration.

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[1] Hyde, International Law, 1922, Volume II, p.469.
[2] U.S. Foreign Relations 1916, Supplement, p.147.

The instructions further show that all British merchant vessels acted from the first day of the war according to orders received from the British Admiralty. These involved the following points in respect to submarine warfare:

1 The report of submarines by radio telegraphy.

2 The use of naval artillery.

3 The use of depth charges.

These instructions were supplemented on October 1, 1939 when a call was transmitted over the radio to ram all submarines.

It might seem unnecessary after this survey to make any mention at all of the defensive and offensive meaning of such orders. The orders on the use of artillery by merchant vessels, however, make a great differentiation, i. e., cannons are to be used only for the defense as long as the enemy on his part adheres to the regulations of international law, and for the offensive only when he does not. The orders covering the practical execution of these directives reveal, however, that there is no difference between defensive and offensive use. Admiral Doenitz explained this in detail when he was heard in court and I do not want to repeat it. Actually from the very beginning of the war merchant vessels were under orders to shoot on every occasion at every submarine which came within range of their guns. And that is what the captains of British merchant vessels did. The reason for this offensive action can certainly not be found in transgressions committed by German submarines during the first weeks of the war, for even the "Foreign Office" report admits that this conduct was correct. On the other hand, the British propaganda may have had great importance which, in connection with the mistaken sinking of the "Athenia" on September 3, 1939, disseminated through Reuter on the 9th of September the statement of unrestricted submarine warfare and upheld it, notwithstanding the fact that the conduct by the German submarines during the first weeks of the war proved to be the contrary of this accusation. Together with the announcement of the British Admiralty's ram-order of October 1, 1939, the Merchant Navy was again informed officially that the German U-boats had stopped to respect the rules of naval warfare, and merchant vessels should adjust their conduct accordingly. It seems to me of no importance that a written supplement to the Admiralty orders was issued as late as spring of 1940, because nowadays a naval war is not directed by letters but by wireless. But according to the latter, the British captains were directed to use their guns offensively against the German U-boat in accordance with the Admiralty's instructions contained in its handbook, beginning September 9th or October 1st at the latest. The German order to attack armed enemy merchant vessels without warning was issued on 4 October only. Thus it was justified in any case, even if one wanted to acknowledge difference in treatment for vessels with defensive and offensive armament.

The guns on the merchant vessels and the orders for their use were, however, only a part of a comprehensive system for the military use of merchant vessels. Since the end of September 1939 the fastest vessels, that is those ships that were the least endangered by submarines, but were especially suited for chasing submarines, received depth charge projectors, that is armaments which make it possible to find the submerged submarines and which thus may be counted as typical weapons for the offensive.

However, what was of more general importance and also of greater danger for the submarines was the order to report every enemy ship on sight, giving its type and location. This report was supposed, so said the order, to take advantage of an opportunity which might never recur to destroy the enemy by their own (the British) naval and air force. This is an unequivocal utilization of all merchant vessels for military intelligence service to directly injure the enemy. If one considers the fact that according to the hospital-ship agreement even the immunity of hospital ships ceases if they relay military information of such a kind, then one need have no doubts about the consequences of such behavior on the part of a commercial vessel. Whatever craft puts out to sea with the order and intention of using every opportunity that occurs to send military reports about the enemy to its own naval and air forces is taking part in the hostilities during the entire course of its voyage, and, based on the aforementioned report of 1930 of the Committee of Jurists, has no right to be considered as a merchant vessel. Any other conception but this would not do justice to the immediate danger which a wireless report means to the reported vessel and which subjects it, often within a few minutes, to attacks by enemy aircraft. All of the Admiralty's directives from the very first day of the war show that British merchant vessels were firmly organized within the system of the British Navy for combating the enemy's naval forces. They were part of the military communications network of the British navy and air force; and their arming with cannon and depth charge projectors, all the practical training, and orders relative to the service were matters that concerned the British Navy.

We consider it out of the question that a merchant fleet which is thus destined and utilized for battle should count among the vessels entitled to the protection of the London Protocol against sinking without warning.

To sum up, I should like to remark as regards the conduct of German submarines against enemy merchant vessels: I believe that the German conception of the London Protocol of 1936, according to the position generally taken by the experts of the powers involved as well as according to the well known opinion of numerous and competent scientists of all countries, had no trace of dishonesty in it. If I were to express myself with caution, I would say that it is, legally at least, perfectly tenable, and thus not the slightest charge can be raised against the German Naval Command, if it issued its orders on a sensible and perfectly fair basis. We have shown that these orders were given only after such conditions had been created by the exposure of British measures as justified the orders issued according to the concepts of German law.

Before I leave this subject I should like to recall to the Tribunal the special protection which the German orders provided for passenger vessels. These were excluded for a long time from all sinking measures, even when they sailed in an enemy convoy and, therefore, could have been sunk immediately, according to the British conception, too. These measures point out especially clearly that accusation of disregard and brutality is unjustified. The passenger vessels were only included in the orders concerning other vessels when in the spring of 1940 there was no more harmless passenger traffic at all, and these ships, because of their great speed and heavy armaments, proved to be particularly dangerous enemies for submarines. If, therefore, Mr. Roger Allen's report cites as an especially good example of German submarine cruelty the sinking in the autumn of 1940 of the "City of Benares," then this example is not very happily selected, because the "City of Benares" was armed and went under convoy.

I shall turn now to the treatment of neutrals in the conduct of German submarine warfare, and can at once point again in this connection to the example which Mr. Roger Allen holds up especially for the sinking of a neutral against international law. It is a question of the torpedoing of the Danish steamer "Vendia" which occurred at the end of September 1939. The Tribunal will recall that this ship was stopped in a regular way and was torpedoed and sunk only when it began preparations for ramming the German submarine. This occurrence led the German government to protest to the Danish government on account of the hostile conduct shown by a neutral boat. The analysis of this one example may show only how different things look if not only the result, namely the sinking of a neutral ship, is known but also the causes which led to this result. Until the last day of the war the fundamental order to the German submarines was in effect not to attack merchantmen recognized as neutral. There were some accurately defined exceptions to this order of which the neutral powers had been notified. They affected in the first place ships which conducted themselves in a suspicious or hostile manner, and secondly ships in announced operational areas.

To the first group belonged above all those vessels which sailed in the war area with dimmed lights. On 26 September 1939 the commander of the submarine fleet asked the high command of the navy for permission to attack without warning vessels proceeding in the channel with dimmed lights. The reason was clear. It is there where at night the enemy's troop and matériel shipments took place through which the second wave of the British expeditionary army was ferried across the Channel to France. At that time the order still was in effect that French ships be not attacked at all. But since at night French ships could not be distinguished from English vessels, submarine warfare in the Channel would have had to be halted completely in compliance with this order. The Tribunal heard from a witness that in this way a 20,000-ton troop transport passed by the torpedo tubes of a German submarine unmolested. Such a result in a war is grotesque and it goes without saying that, therefore, the naval command approved the request of the commander of the submarine fleet.

The Prosecution has now made much ado about a note written on this occasion by an assistant at the Naval Command, Lieutenant Commander Fresch. Already the Chief of Section, Admiral Wagner, did not approve of the opinions expressed in it; and, therefore, they did not lead to corresponding orders. The order to attack blacked-out ships was issued by radio without any further explanation on the part of the Naval Command, and on 4 October it was extended by it to further regions surrounding the English coast, and again without any explanation in the sense of the above-mentioned note.

Examining the question of blacked-out vessels from the legal standpoint, Vanselow,[1] the well-known expert on the law of naval warfare, makes the following remark:

"In war, a blacked-out vessel must in case of doubt be considered as an enemy warship. A neutral, as well as an enemy merchant vessel navigating without lights, voluntarily renounces during the hours of darkness all its right to immunity from attack without being stopped."

I furthermore refer to Churchill's declaration made in the House of Commons on 8 May 1940 concerning the action of British submarines in the Skagerrak. Since the beginning of April, the latter had the order to attack all German vessels without warning during the daytime, and all vessels, and so all neutrals, too, at night. This implies recognition of the legal standpoint exposed. It even goes beyond the German order, in so far as neutral merchant vessels navigating with all lights on were sunk without warning in these waters during the night.

In view of the clear legal aspect it would hardly have been necessary to give an express warning to neutral shipping against suspicious or hostile conduct. Nevertheless, the naval command (Seekriegsleitung) saw to it that this was done.

On 28 September 1939 the first German note was sent to the neutral governments with the request that they warn their merchant ships against any suspicious conduct, such as changes in course, and the use of wireless upon sighting German naval forces, dimming, or noncompliance with the request to stop, etc. These warnings were subsequently repeated several times and the neutral governments passed them on to their captains. All this has been proved by the documents which have been submitted. Therefore, if, as a result of suspicious or hostile conduct, neutral ships were treated like enemy ships, they have only themselves to blame for it. The German submarines were not allowed to attack anyone who as a neutral maintained a correct attitude during the war and there are hundreds of examples to prove that such attacks never did occur.

Now I wish to deal with the second danger which threatened neutral shipping, the zones of operations. The actual development was, briefly summed up, as follows:

On 24 November 1939 the Reich Government sent a note to all seafaring neutrals in which it points to the use of enemy merchant ships for attacking purposes as well as to the fact that the Government of the United States had barred to its own shipping a carefully defined naval zone around the Central European coast, the so-called U. S. A. combat zone. As the note states, these two facts give the Reich Government cause "to warn anew and more strongly that in view of the fact that the actions are carried on with all means of modern war technics and in view of the fact that these actions are increasing in the waters around the British Isles and near the French coast these waters can no longer be considered safe for neutral shipping."

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[1] Vaneslow, International Law, Berlin, 1931, No.226i.

The note thereupon recommends for the shipping between neutral powers certain sea routes which are not endangered by German means of naval warfare and, furthermore, it recommends legislative measures according to the example set by the U. S. A. In concluding, the Reich Government rejects the responsibility for consequences which would follow if warning and recommendation should not be complied with. This note constituted the announcement of an operational area of the U. S. combat zone with the limitation that only in those sea zones which are actually endangered by actions against the enemy consideration could no longer be given to neutral shipping.

The Naval High Command (Seekriegsleitung) indeed observed this limitation. In the beginning the neutral powers had more than six months in which to take the measures recommended by the German Government for the safety of their own shipping and to direct their shipping along the routes announced. Starting in January the German Command then opened up to the German naval forces within the operational area announced accurately defined zones around the English coast in which an attack without warning against all ships sailing there was admissible. The naval chart on which these zones had been marked was submitted to the Tribunal. The chart shows that gradually those zones and only those were taken in which, as a result of mutually increasing attacks and defensive actions at sea and in the air, engagements continually occurred so that every ship entering this area was operating with the naval forces of both powers nearby. The last one of these zones was designated late in May 1940. These zones were not and needed not be announced because they were all within the area of operation as proclaimed on 24 November 1939. The distance of these zones from the enemy coast was on the average 60 sea miles. Outside these boundaries the declaration concerning the area of operations of 24 November was not observed, i.e., neutral ships could be stopped and sunk only in accordance with the Prize Ordinance.

This situation changed when, after the collapse of France in the summer of 1940, the British Isles became the center of the war. On 17 August 1940 the Reich Government sent to the neutral governments a declaration in which the entire area of the U. S. combat zone around England without any limitation was designated as operational area.

"Every ship," so the note reads, "which sails in this area exposes itself to destruction not only by mines, but also by other combat means. Therefore, the German Government warns once more and urgently against entering the endangered area."

From this time on the area was fully utilized and the immediate use of arms against the craft encountered in it was permitted to all naval and air forces in so far as special exceptions had not been ordered. The entire development described was openly dealt with in the German press, and Grand Admiral Raeder granted interviews to the foreign press on this subject which clearly showed the German viewpoint. If, therefore, in the mentioned sea zones neutral ships and crews sustained losses, at least they cannot complain about not having been warned explicitly and urgently beforehand.

This statement alone has not much meaning in the question of whether areas of operation as such constitute an admissible measure. Here, too, the prosecution will take the position that in the London Protocol of 1936 no exceptions of any kind were made for areas of operation and, therefore, such exceptions naturally do not exist.

As is well known, operational areas were first proclaimed in the first world war. The first declaration of this kind came in the British Government on 2 November 1914 and designated the entire area of the North Sea as a military area. This declaration was justified on the basis that it was a reprisal against alleged German violations of international law. Since this justification naturally was not recognized, the imperial government replied on 4 February 1915 by designating the waters around England as a military area. On both sides certain extensions were made subsequently. I do not want to go into the individual formulations of these declarations and into the sagacious legal deductions which were made from their wording for or against the admissibility of these declarations. Whether these areas are designated as military area, barred zone, operational area, or danger zone, the point always was that the naval forces in the announced area had permission to destroy any ship encountered there. After the world war the conviction of naval officers and experts in international law alike was in general that the operational area would be maintained as a means of naval warfare. The development typical for the rules of naval warfare was confirmed here, namely, that the modern technique of war forcibly leads to the use of war methods which at first are introduced on the grounds of being reprisals, but which are gradually being used also without such a justification and recognized as legitimate.

The technical reasons for such a development are very obvious. The improvement of mines made it possible to endanger large sea areas by mines. But if it was admissible to destroy by mines every ship sailing despite warning in a designated sea area, one could see no reason why other means of naval warfare should not be used in this area in the same way. Besides, the traditional institution of the blockade directly outside enemy ports and coasts by mines, submarines, and aircraft was practically made impossible so that the sea powers had to look for new ways to bar the approach to enemy coasts effectively. Consequently, it was these necessities which were the compelling factors in bringing about the recognition of the operational areas.

It is true that there was by no means a uniform interpretation concerning the particular prerequisites under which the declaration of such areas would be considered admissible, just as there was none with regard to the designation which the belligerent power must choose. Also the conferences of 1922 and 1930 did not change anything in that respect. This is shown by the efforts which were also after 1930 exerted especially by American politicians and experts in international law for a solution of this question. (In 1935 the American Senator, Ney, proposed to prohibit operational areas. In 1937 Charles Warren made a motion for a discussion on it in the Society for International Law. And the draft for a convention which was already mentioned before and which was drawn up by American scientists also dealt with this subject.)

Unfortunately, there is no time here to discuss these questions in detail and, therefore, it must suffice for the purposes of the defense to state that during the conferences in Washington in 1922 and in London in 1930 the operational area was an institution known to all powers concerned, an institution operating in a way which had been determined by both sides in the first world war to the effect that all ships encountered in it would be subject to immediate destruction.

If this institution were to have been abolished in the mentioned conferences, especially in the treaty of 1930, an accord should have been reached on this question, if not in the text of the agreement, at least in the negotiations. The transcripts show nothing of the kind. The relationship between operational area and London Protocol remained unsettled.

The French Admiral, Caston, has the same viewpoint.[1] Admiral Bauer, Commander of Submarines in the first world war, in 1931 stated his disapproval of the application of the London rules in the operational area and this opinion was absolutely known to the British Navy.[2] In a thorough study of Ernst Schmitz[3] in 1938 a merchant vessel which enters an operational area despite the general prohibition is regarded as being guilty of "persistent refusal to stop." The powers participating in the conferences in Washington and London consciously avoided, in these as in other cases, to start controversial questions on which no accord could be reached. Therefore, every power maintained a free hand to champion in practice that opinion which corresponded to its interests.

There was no doubt left in the minds of the participants on this point, and I have as a witness for this no one less important than the French Minister for Foreign Affairs of that time, Briand. In his instruction of 30 December 1921 to Sarraut, the French chief delegate in Washington, he announces the basic readiness of concluding an agreement about submarine warfare. However, he then points out a series of questions as being essential parts of such an agreement, among them the arming of merchant ships and the definition of combat zones. The instruction goes, "It is indispensable to examine these questions and to solve them by a joint agreement, for surface vessels as well as for submarines and aircraft, in order not to establish ineffective and deceptive stipulations." [4]

Particularly with respect to the question concerning the area of operation, Briand characterizes the submarine rules as being "ineffective and deceptive." After this testimony nobody will be able to designate the German conception as fraudulent according to which ships in declared areas of operation are not under the protection of the London Protocol. Even Mr. Roger Allen's report concedes this.[5]

Therefore, the attacks of the prosecution seem to be directed, as I understand from the cross examinations, less against the existence of such zones than against their extent, and we have repeatedly heard the figure of 750,000 square miles. Incidentally, it is to be noticed that this figure includes the land area of Great Britain, Ireland, and Western France; the area of water alone amounts only to 600,000 square miles. I quite agree, however, that through operational areas of such a size the interests of the neutrals are badly prejudiced.

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[1] Theories on Strategy, IV, p. 323: "Even in a military zone, would one not be confronted with the damned Article 22 of the London Treaty?"

[2] Bauer, The Submarine, 1931. A Report by Capt. G. P. Thomson, R.N., in 76 Journal of the Royal News Instruction, 1931, p. 511.

[3] Barred Zones in Naval War, Journal for Foreign Public Law and International Law, Vol. VIII, 1938, p. 671.

[4] French Yellow Book, "The Washington Conference," p. 88.

[5] Report of 8 October 1940, p. 3: One thing is certain; namely, apart from vessels in declared war zones, destruction of a merchant vessel is envisaged if even only after capture.

The more remarkable is the fact that the above-mentioned American draft for an agreement of 1939 which concerns the rights and duties of neutrals provides for a considerable expansion of the operational area. Such an area which is termed "Blockade Zone" in the draft is to include the waters up to a distance of 50 sea miles from the blockaded coast. This would correspond to a large extent to the area of waters in which surprise attacks were not authorized until 17 August 1940; it covers 200,000 square miles approximately. However, it seems to me almost impossible to approach from a scientific angle such an eminently practical question as that of the expansion of an operational area. As long as this question is not settled by an agreement, the actual determination will always be a compromise between what is desirable from a military point of view and what is politically possible. It seems to me that laws are only violated when a belligerent misuses his power against neutrals. The question as to whether such a misuse exists should be made dependent upon the attitude of the opponent towards the neutrals as well as upon the measures taken by the neutrals themselves.

During the production of documents, the Tribunal has eliminated all those which I intended to utilize in order to prove that British naval warfare also paid no attention to the interests of neutrals when they were in contradiction with their own interests. If it is the Tribunal's wish, I will not go into the details of the British measures, and in summing up I will mention them only in so far as they are indispensable for the legal argumentation. The following points are chiefly concerned:

1. The British regulations of 3 September 1939 concerning contraband goods which practically prevented neutral mercantile traffic with Germany through the introduction of the so-called "hunger blockade."

2. The decree concerning control ports for contraband goods compelled neutral ships to make great detours through the middle of the war zone, to which must be imputed without doubt a series of losses of neutral ships and crews.

3. The introduction of an export blockade against Germany on 27 November 1939 by means of which the importation of German goods was made impossible for neutrals.

4. The introduction of the Navicert System in connection with the black lists which put the whole of neutral trade under British control and which made ships which did not accept this system liable to be seized and confiscated.

I am not considering the question here whether these British measures towards neutrals were admissible or not from the point of view of international law. In any case, the neutrals themselves considered many of them inadmissible and there was hardly any which did not arouse more or less vehement protests, as for instance on the part of Spain, the Netherlands, Soviet Russia, and the U. S. A. From the beginning the British Government on its side had prevented any legal examination of its measures by freeing itself from the optional clauses of the Permanent International Tribunal at the Hague, through a note of 7 September 1939. This step was expressly based on the necessity of providing the British Navy with full freedom of action.

On the British side the fact was emphasized in the first world war already, and has been emphasized ever since, that British measures did indeed prejudice the interests and possibly the rights, too, of the neutrals. However, they did not imperil either the ships or the crews and are therefore considered morally superior to the inhuman German measures. First, as mentioned before, the obligation of entering control ports was dangerous for neutral ships and crews; and for this very reason neutral countries protested against it. But apart from this it seems to me that the actual difference between the British and German measures for blockading the adversary are not founded upon moral differences but upon differences in their sea power. In the waters where the British navy did not exercise naval supremacy, namely, around the coasts we were occupying as well as in the Baltic Sea, it used the same methods of naval warfare as we did.

In any case, the official German opinion was that the British-mentioned control measures against neutrals were inadmissible; and the Reich Government formulated against the neutral powers the accusation that they protested indeed but actually submitted to the British measures. This is clearly stated in the proclamation issued on the occasion of the proclamation of the blockade on 17 August 1940. Consequently, the following facts confronted the German Naval Command:

1. A legal trade between the neutrals and the British Isles no longer existed. On the ground of the German answers to the British stipulations concerning contraband goods and the British export blockade, any trade to and from England was contraband

trade; therefore illegal from the point of view of international law.

2. The neutrals submitted in practice to all British measures even when these measures were in contradiction with their own interests and their own conception of legality.

3. Thus, the neutrals directly supported British warfare. For, by submitting to the British control system in their own country, they saved the British navy the use of large fighting forces which, according to the hitherto existing international law, should have exercised the trade control at sea, and which were now available for other war tasks. Therefore, the German Command, in determining its operational area in order to prevent the illegal traffic from reaching England, saw no reason for giving preference to the considerations towards the neutrals to the detriment of its own military requirements. This all the less as the neutral shipping, which despite all warnings continued to travel to England, took big money for this increased risk and still considered, therefore, the trade with England as a lucrative business. (Comdr. Russel Grenfell, RN, The Art of the Admiral, London, 1937, p. 80) "The neutral merchants, however, are not likely to relinquish a highly lucrative trade without a struggle, and thus there arises the acrimonious wrangle between belligerents and neutrals which is a regular feature of maritime warfare, the rules for which are dignified by the name of international law."

In addition to that, the most important neutrals took themselves measures which can be regarded as a completely new interpretation of the existing laws of naval warfare. All American countries jointly proclaimed the Pan-American safety zone, an area along the American coast up to a distance of approximately 300 sea miles. In these waters, comprising altogether several million square miles, they asked the belligerents to give up the exercise of those rights which, according to the hitherto existing international law, naval forces of the belligerents were authorized to apply to neutrals. On the other hand, as I have already mentioned, the President of the United States prohibited on 4 November 1939 U. S. citizens and ships to travel within an area of waters expanding over approximately 1 million square miles along the European coast. Thus, the development of the laws of naval warfare, under leading participation of the neutrals, forcibly led to a recognition of large areas reserved either for the purpose of safety or for that of combat.

At the same time the American President explicitly stated in his proclamation that the maritime zone he had had closed was endangered by combat action as a result of technical developments. The proclamation thereby only took into consideration the development of modern weapons; the long-range coastal artillery which, for example, could easily fire across the English Channel; the invention of locating devices which permitted land supervision of maritime traffic over dozens of sea miles, and particularly the increased speed and range of aircraft.

From this development, the German Naval Command drew the same conclusions as the above-mentioned neutrals, namely, that defense and offense would necessarily have to cover large maritime areas in this war. It was therefore not from choice that the German operational area which the prosecution objects to grew to such a size; it was only because it was adopting itself to a system which was also recognized by the other powers as legitimate.

In order to examine the legality of the German measures on the basis of enemy methods, may I ask the Tribunal to recall the naval chart on which the British zones of warning and danger are marked? These zones cover about 120,000 square miles. Even if these dimensions are smaller than those of the German operational area, it seems to me that the difference between 100,000 and 600,000 square miles is not so much a question of legal judgment as one of coastal length and of strategic position on the sea. This observation is confirmed by the American practice against Japan such as Admiral Nimitz has professed.

He says: "In the interest of the conduct of operations against Japan the area of the Pacific Ocean is declared a zone of operations."

This zone of operations covers over 30 million square miles. All ships in it, with the exception of their own and Allied as well as hospital ships, were sunk without warning. The order was issued on the first day of the war, on 7 December 1941, when the Chief of the Naval High Command ordered unrestricted submarine warfare against Japan.

It is not my business to examine whether this order issued on the first day of the war is to be looked upon and justified as a measure of reprisal. For me, the important thing is to show how it worked out in practice, and this is unequivocal.

The Prosecution attaches special blame to the orders to carry out surprise attacks in the operational areas if possible unnoticed, so that mine hits may be pretended. Orders to this effect existed for the period from January until August 1940, i.e., during the period when submarines were permitted to act without warning not in the whole operational area of 24 November 1939 but only in the especially defined areas below the English coast. In this camouflage the Prosecution sees proof of a bad conscience and thereby the consciousness of wrong doing. The real reasons for the measures ordered were of a twofold nature: military and political. For the admirals concerned, the military reasons stood of course in the foreground; and the commander of the submarine fleet also knew only these reasons. The enemy was to be left in uncertainty as to what weapons of naval warfare had caused his losses, and his defense was to be led astray in this manner. It is self-evident that such misleading of the enemy is fully justified in time of war. The measures had the desired military success; and in numerous cases the British Navy employed flotillas of mine sweepers where a ship had been torpedoed, and conversely started a submarine chase where a loss had occurred through mine hits.

For the Supreme Command, however, it was not the military but the political reasons which were the determining factor. These invisible attacks were meant to give an opportunity of denying before neutrals that the sinkings were due to submarines, and of tracing them back to mines. This actually happened in some cases. Does that now mean that the German Government itself considered illegal the use of surprise submarine action within the operation area? I do not think so.

In view of the repeated accusations which the Prosecution has built up here and elsewhere from the camouflaging of measures, the denial of facts, I feel obliged to make a few remarks on the point as to whether there is any obligation at all in international politics to tell the truth. However, it may be in peacetime, in time of war, at any rate, one cannot recognize any obligation to tell the truth in a question which may be of advantage to the enemy. I only need to point to Hugo Grotius who says: "One may conceal the truth wisely. Dissimulation is absolutely necessary and unavoidable." (De jure pacis ac belli, book III, chapter I, par 6, quot. Augustin, "One may conceal the truth wisely," and Cicero, "Dissimulation is absolutely necessary and unavoidable, especially for those to whom the care of the state is entrusted.")

What would it have meant for the military situation if U-boat sinkings in the instances dealt with here had not been denied but admitted instead? First of all, since that would have come to the knowledge of the enemy, too, we should have lost the military advantage which lay in the misleading of his defense. Furthermore—and this is no less important—we might quite possibly have furnished our enemy with allies who would have helped him with propaganda if not with their weapons. In view of the fact that some of the neutrals concerned were so dependent on

England, they would probably not have recognized the German viewpoint as to the legitimacy of the operational areas, especially since this viewpoint was contrary to their own interests. It would have led to political tensions and possibly to armed conflicts. Our enemies would have derived the only immediate advantage from it. From the standpoint of the law, this endeavor to camouflage the use of submarines, even from the neutrals, does not seem objectionable to me. But if the Prosecution uses this with the intention of moral defamation, it applies standards here which heretofore have never been applied to the conduct of a war and to the politics of any other country in the world. It was just in naval warfare in which the same methods of camouflage were employed by the other side, too. The operational areas which Great Britain declared around the European coasts from Norway to Biscay were, with the exception of the Biscay area, declared mine danger zones. But we know from Churchill's statement of May 1940 as well as from testimonies of witnesses that in these areas there were unlimited attacks with submarines, speedboats, and above all with aeroplanes. Consequently, very often neither the German command nor the neutral country which had been attacked knew whether a loss sustained in such an area really should be traced back to a mine or to another weapon of naval warfare. To conclude that the camouflaging of a measure constitutes its illegality thus seems to me entirely without basis.

Within the German operational zone all ships were on principle attacked without warning. However, orders had been given to make exceptions in the case of certain neutrals, such as, in the beginning, Japan, the Soviet Union, Spain, and Italy. In this measure, the prosecution saw the endeavor of the Naval Command (Seekriegleitung) to terrorize the smaller neutral countries, whereas it dared not pick a quarrel with the big ones. The real reason for this different treatment is given in Document UK-65 in the notation on the report which the Commander-in-Chief of the Navy made to the Fuehrer on 16 October 1939. According to this notation, the neutral governments mentioned are requested to declare that they will not carry contraband of war; in every other respect they will be treated just like any other neutral country. This means that the reason for the different treatment was merely that certain countries were willing and in a position to forbid their boats to carry contraband of war to England, whereas others could not or would not do it because of their political attitude or their economic dependence on England. Therefore, it is not a question of terrorizing the smaller neutrals and sparing the bigger ones, but of preventing traffic in contraband of war and sparing of legal commercial trade. Since no general legal maxim exists which compels the belligerent power to treat all neutral powers alike, no objection can be raised on the basis of international law. It would indeed be strange if here, in the name of humanity, the demand were made that German submarines should have sunk even those ships which they did not want to sink at all.

The Tribunal saw from the Standing War Orders submitted that during the further course of the war even the small powers, which were the only neutral ones left, could, by virtue of shipping agreements, cross the operational area along certain routes without being molested by German submarines. In this way, for instance, Sweden and Switzerland as well as Turkey could carry on their maritime trade during the war.

Outside the operational area announced, the German submarines were never permitted to attack neutral ships. In this respect the naval command desisted from waging any submarine warfare against neutral merchant shipping, since enemy air surveillance made stopping and searching too dangerous for German submarines. Against the disadvantage of submarine warfare within the operational area, the neutrals had, outside the area, the advantage of remaining completely unmolested, even if they were shipping contraband goods and were liable to be sunk because of this without being stopped. Thus, the neutral vessel outside the operational area was only in danger if it behaved in a suspicious or hostile way or if it was not clearly marked as neutral. And the German Naval Command (Seekriegsleitung) again and again called the attention of the neutral powers to this necessity.

In this connection I must mention the order of 18 July 1941, according to which U. S. A. vessels within the operational area were assimilated to all other neutrals, i.e., they could be attacked without warning. The Prosecution has seen in this an especial proof that the submarine warfare against neutrals was waged in a "cynical and opportunist" way. If this is to mean that it was also influenced by political considerations, then I am ready to admit it. But I do not consider it a reproach; for, since war itself is a political weapon, it is in keeping with its essence if individual sectors of it are placed under the leadership of politics. In particular, no reproach should be seen in the orders of the German leadership as regards the utilization of submarines against the U. S., because it is just they which are a proof of the efforts to avoid any conflict with the United States.

As is known to the Tribunal from documents and the testimonies of witnesses, the ships of the United States during the first years of the war were exempt from all measures of naval warfare; and this was true as well when, contrary to the original American legislation, they sailed into the U. S. A. combat zone and thus into the German operational area in order to carry war materiel to England. This policy was changed only when, in addition to the many unneutral acts of the past, the active employment of the American Navy had been ordered for the protection of British supply lines. Well known are the statements of President Roosevelt which he made at that time about the "bridge of boats over the Atlantic" and the support which should be given to England "by every means short of war." It may be doubtful whether the "realistic attitude"[1] which the U. S. A. naval and air forces were ordered to take at that time did not already constitute an illegal war as was claimed just now by some American sources.[2]

At least the U.S.A. had abandoned its neutrality and claimed the position of a "nonbelligerent" which was also a new aspect of international law in this war. If in this connection one wished to raise the charge of cynicism, it should be directed against the orders which were issued in justification of the consequences of the American attitude.

I have endeavored to present the Tribunal with a survey of the essential orders issued, and to say a few things in respect of their legality. No doubt there were instances of attacks on ships which, according to the orders mentioned, should not have been attacked. There are only few such cases, and some of them have been brought up at this trial. The best known concerns the sinking of the British passenger vessel "Athenia" on September 3, 1939 by the "U 30" under the command of Lieutenant Captain Lemp. The sinking of this ship was due to the fact that the commander took it by mistake for an auxiliary vessel. If the Tribunal still hesitated to believe the concurring statements of all the witnesses heard here in this critical and so much talked of case, these doubts would be removed by the behavior of the same commandant in the days and weeks following the sinking. Lt. Captain Lemp, as the log of "U 30" of that time shows, adhered strictly to the prize ordinance; and from this log I was able to submit several examples of the fair and gentlemanly conduct of German commandants even when by such conduct they greatly endangered their submarines.

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[1] Admiral King: "Report of the American Chief of Naval Operations"; German Edition, 1946, p. 157: "However the situation might have been viewed on the basis of international law, the American Navy took a realistic position toward the events in the Atlantic."

[2] John Chamberlain, The Man who Pushed Pearl Harbor, "Life" of 1 April 1946.

Only on the return of the "U 30" from its operations at the end of September 1939 were the commander of submarines and the Commander-in-Chief of the Navy fully informed of the whole affair of the sinking of the "Athenia." Upon his return, the commandant reported to the U-boat commander the mistake which he himself recognized as such and was sent to Berlin to report in person.

Dr. Siemers will deal with the political development of this matter. I only mention the military occurrences. Admiral Doenitz received the following communication from the Naval High Command:

1. That the affair be further dealt with politically in Berlin.

2. That court martial proceedings are not necessary since the commandant acted in good faith.

3. That the entire matter be kept in strict secrecy.

On the grounds of this order the U-boat commander gave orders for the report on the sinking of the "Athenia" to be removed from the log of the "U 30" and gave instructions that the log be completed in such a manner as to make the absence of an entry inconspicuous.

As the Tribunal has seen, this order was not carried out satisfactorily, obviously for the reason that the officer in charge had no experience whatever of such measures.

The Prosecution pointed out this changing of the war diary as a particularly criminal act of falsification. This, it seems to me, is based on a misunderstanding of the facts. The war diary is nothing else but a military report by the commandant to his superior commands. What occurrences should or should not be included in reports of this kind is not decided by any legal or moral principle but is solely a matter of military regulations. The war diary was meant to be secret; however, it was, like many secret matters, accessible to a very large group of people. This is already apparent from the fact that it had been issued in 8 copies, of which some were intended not only for the higher staffs, but for schools and for training flotillas as well. Therefore, whenever an occurrence was to be restricted to the knowledge of a small group of individuals, it was not to be reported in the war diary. Since the war diary was kept consecutive, the missing period necessarily had to be filled in with another, ergo, incorrect entry. I can see nothing immoral in such a measure, much less anything illegal. As long as there is secrecy in time of war—and this is the case in all countries—it means that all facts cannot be told to everybody; and, therefore, one sometimes has to make incorrect statements, too. A certain moral offense could perhaps be seen in such action if thereby a falsification of history for all times had been intended. This, however, was by no means the case. The commandant's report in regard to the sinking of the "Athenia" was of course submitted in the original form to the immediate superiors, the commander of the U-boats and the Commander-in-Chief of the Navy, and was also kept there.

I should like further to say briefly that a general order not to enter certain happenings into the war diary has never existed.

The "Athenia" case shows one more thing, the manner in which the compliance of U-boat commandants with issued orders was enforced. In spite of the justified conception of the Naval High Command that the commandant acted in good faith, he was punished with arrest by Admiral Doenitz because, by employing greater caution, he perhaps might have recognized that this was not an auxiliary cruiser. Punishment was meted out in other cases, too, where the orders had been mistakenly violated.

The Tribunal knows the wireless communications of September 1942 by which, on the occasion of the sinking of "Monte Gorbea," the commandant had been informed that upon his return he will have to face court-martial proceedings for violation of orders regarding the conduct toward neutrals. All commandants received notice of this measure.

The Tribunal will please consider what such strict threats mean to a commandant at sea. If the directives of the American Manual for Courts-Martial were to be considered as a basis, then court-martial proceedings against officers should only be initiated in cases where dismissal from the service seems warranted. (Manual for Courts-Martial, U.S. Army, 1928, p. 10.)

That should never be the case when the violation of an order is an accidental one. For a commander who is supposed to make war and gain successes with his soldiers, it is extremely hard and, in fact, under certain circumstances actually a mistake to have one of his commandants on his return from a successful operation tried before a court martial because of a failure which occurred in that action.

Every military leadership acts in accordance with these principles. In this connection, I will refer to the unlimited commendation which the commander of the British destroyer "Cossak" received for setting free the prisoners of the "Altmark" in spite of the incidents which occurred during this action and which were probably regretted by the British, too.

I had to go into these matters in order to meet the accusation that any sinkings carried out against orders were sanctioned afterwards by the High Command in so far as no drastic steps were taken against the commandant. Especially in the field of submarine warfare compliance with orders issued was ensured by the continuous personal contact of the commandants with their commander. After the conclusion of every enemy operation an oral report had to be made; and all measures taken were subjected to sharp criticism simultaneously, while preventive instructions were given at the same time for future behavior.

The German submarines undertook many thousands of combat operations during this war. In the course of them orders issued were violated only in very rare instances. If one considers how difficult it is for a submarine to establish its exact position and the boundaries of an operational area and to distinguish an armed from an unarmed merchant vessel, a passenger ship from a troop transport, or a neutral from an enemy ship, the low number of sinkings which were considered illegal by the Germans, too, must be taken as proof of an especially effective and conscientious leadership. After this discussion of the factual development of German submarine warfare I still have to deal with the accusations built up by the Prosecution from some preparatory deliberations on the subject of the organization of submarine warfare.

Simultaneously with the combat instructions of 3 September 1939 in which German submarines were ordered to comply in their operations strictly with the Prize Ordinance, an order was prepared in the Naval High Command decreeing action without warning in case the enemy merchantmen were armed. In addition to this, during the first days of the war, there was an exchange of correspondence with the Foreign Office on the subject of declaring prohibited zones.

The Prosecution looks upon these two documents as proof of the will to conduct a war against international law from the very start. I, on the other hand, regard these same documents as proof of the fact that the Naval Command was fully unprepared for a war with England and that it was only when the British had already declared war that it began to set about thinking in the most primitive way how such a war should be conducted. Since neither surprise attacks on armed merchant vessels nor the declaration of prohibited zones violate international law, a belligerent should be allowed just to think over on the outbreak of war if and when he wants to make use of these opportunities.

As we know from the above-mentioned orders of the British Admiralty, as early as 1938 the latter had made a thorough study of all the possibilities resulting from the war upon commercial shipping and had worked them out in a practical way.

This same standpoint holds good also for the memorandum of the Naval High Command of 15 October 1939, which has been quoted several times by the Prosecution. Its very heading shows that it is a study: "Possibilities for the intensification of naval warfare."

In accordance with the heading, the memorandum reveals an examination of military demands for effective naval warfare against England and the legal possibilities for fulfilling these demands. The result was the order of 17 October 1939 decreeing the immediate use of arms against all enemy merchant vessels, justification for which resulted, as we have already shown, from their having been armed and incorporated in the military system. Beyond this no intensifying measures were regarded as justified for the time being, and the suggestion made was to wait and see what the further conduct of the enemy would be like.

One sentence in this memorandum arouses special distrust on the part of the Prosecution. It says that naval warfare must be kept as a matter of principle within the framework of existing international law. But measures which might result in successes decisive for the war would have to be taken, however, even if new laws of naval warfare were created thereby. Does this really constitute a renunciation of international law?

On the contrary, a departure from existing international law is made dependent only on two quite limited conditions:

1. A military one, namely, that if measures are involved which were of decisive importance for the outcome of the war, i.e., that would at the same time shorten the war.[1]

2. A moral one, namely, if the nature of the new measures makes them suitable for incorporation in a new international law.

The memorandum itself states that this would be possible only within the framework of the laws of military combat ethics, and a demand is therefore made for rigid adherence without any exceptions to these ethics of warfare. Under these conditions there can hardly be any doubt as to the possibility of formulating new international laws.

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[1] With regard to this point, I refer to the extensive literature on the subject of the right of self-preservation in case of urgent necessity. This right was given as a reason for the attack on the Danish Fleet in 1807 as well as for the Hunger Blockade against Germany.

As expressed by the well-known expert on international law, Frhr. von Freytagh-Loringhoven, "It has always been war which has given its strongest impulses to international law. Sometimes they have been of positive and sometimes of a negative nature; they have led to further development of already existing institutions and norms, to the creation of new forms or the reversion to old ones, and not infrequently also to failures." [1]

Especially in this trial, which itself is supposed to serve the development of new international law, the possibility of such a development cannot be denied.

The American prosecutor, Justice Robert Jackson, in his report to the President of the United States with regard to this problem expressed his opinion as follows:

"International law is not capable of development by legislation, for there is no continuously sitting international legislature. Innovations and revisions in international law are brought about by the action of governments, designed to meet a change in circumstances. It grows, as did the common law, through decisions reached from time to time in adapting settled principles to new situations." (Excerpt from "Neue Auslese," 1936, booklet 1, p. 16.)

These words carry a full justification of the clause objected to by the Prosecution in the memorandum of the Naval High Command. And that the Allies, too, deemed war-deciding measures justified, even though they were contradictory to the present views of international law, is proved by the use of the atom bomb against Japanese cities.

As I am interested in justifying the actual measures taken by the Naval High Command, I did not consider who of the two admirals accused carries more or less responsibility for one or for the other measure. As a formal basis in nearly all cases a Fuehrer decree exists. Both admirals, however, stated that they consider themselves fully responsible for all orders of the naval war that they gave or which they transmitted. I should like to add to that only two remarks:

As far as political considerations were decisive for orders of the U-boat war, the Commander-in-Chief of the Navy had no influence on them. The commander of the U-boats was not even notified of these considerations, just as little as of the political settlement of incidents which arose through U-boats.

My second remark concerns the question to what extent a military commander may be held responsible for the accuracy of legal considerations which he does not make himself, but which are delivered to him by the first experts of his country who are not just small-town lawyers. For the commander of U-boats, it is to be added that he had only tactical tasks and that his staff contained only a few officers, none of whom had the ability to examine questions of international law of the importance mentioned here. He, therefore, had to rely that the orders issued by the Naval War Command were examined as to their legality and were in order. That is probably being handled in a like manner in every navy of the world. A professional seaman is not competent for legal questions; with this reasoning, the Tribunal cut off a remark by Admiral Doenitz about a legal question. This condition must, however, be considered in applying principles which the German Supreme Court during the war crimes trials after the first world war formulated in this way: "The culprit must be conscious of the violation of international law by his doings."

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[1] Frhr. v. Freytagh-Loringhoven, "Formulation of New International Laws in Time of War," Hamburg, 1941, p. 5.

This appears to me as just as I should hold it incompatible with the commandments of justice if soldiers would be charged with a criminal responsibility in deciding legal questons which could not be settled at international conferences and which are hotly disputed in the field of science.

In this connection I should like to mention that the London Pact of 1930 did not adopt from the Root Resolution of 1922 the criminal prosecution for violations of the rules of U-boat warfare. The five naval powers participating in this conference apparently came to the conclusion that the problems of naval warfare cannot be solved by the means of penal law. And this wisdom applies fully today.

I am now coming to the second basic charge of the Prosecution, the one of the intentional killing of the shipwrecked. It is aimed at Admiral Doenitz alone, not at Admiral Raeder. The legal basis for the treatment of the shipwrecked for those ships which are entitled to the protection of the London Protocol of 1936 is laid down in the protocol itself. There it reads that before the sinking, crews and passengers are to be brought to safety. This was adhered to on the German side, and the difference of opinion from the Prosecution concerns only the question already dealt with: which ships were entitled to the protection of the protocol and which were not.

In the case of all ships which were not entitled to the protection of the protocol the sinking is to be considered a military combat action. The legal basis, therefore, for these cases regarding the treatment of the shipwrecked is contained in the Hague Convention concerning the application of the principles of the Geneva Convention for Naval warfare of 18 October 1907, although it was not ratified by Great Britain.

Accordingly both belligerents, after each combat action, shall make arrangements for the search for the shipwrecked, as far as military purposes allow this. Accordingly the principle applied to the German U-boats to help the shipwrecked of steamers sunk without warning, if by doing (1) the boat would not be endangered and (2) the accomplishment of the military mission would not be prejudiced.

These principles are generally acknowledged. In this connection I am referring to the order of the British Admiralty, for example: "No British ocean-going merchantman shall aid a ship attacked by a U-boat."

I further refer to the affidavit of Admiral Rogge, according to which, in two cases personally witnessed by him, nothing was done by a British cruiser to rescue the shipwrecked, because U-boats were assumed to be nearby, once correctly so and once erroneously. A self-endangering appears to exist in a higher degree for U-boats in comparison to other types of vessels, as to its special sensitiveness to hits.

Also, in the case of the second exception from the rescue duty, the prejudice to the military mission, the U-boat is subject to special conditions. It has no room to take guests aboard. Its supply of food, water, and fuel is limited and each considerable allocation is destructive to its combat mission. It is further typical for the U-boat that the combat mission may also call for an unnoticeable attack and therefore exclude the rescue duty.

In order to show here also an opinion about the practice of the opposite side, I quote from the statement of Admiral Nimitz: "In general U.S. submarines did not rescue enemy survivors if it meant an unusual additional danger for the submarine or if the submarine was prevented from further carrying out its mission."

In the light of these principles I will briefly consider the measures of rescue by U-boats until autumn 1942. The basic order was issued by the Naval Warfare Command on 4 October 1939 and ordered rescue whenever possible from the military standpoint. This was temporarily limited through the Standing Order for War 154. This order, issued in December 1939 applied to the few submarines which at that time were operating directly below the English coast. It may be seen from the order itself that every paragraph deals with combat in the presence of enemy forces for security purposes. The last paragraph also deals only with this battle situation and serves the warranted purpose of protecting the submarine commanders from the dangers to which, under the existing circumstances, they exposed their boats through rescue measures in every case. When, after the Norway campaign, the activity of the submarines gradually shifted into the open Atlantic, this order became outdated and was canceled in the fall of 1940. In the time that followed, the German submarine commanders enacted rescue measures whenever they could assume such responsibility from the military standpoint. This is known to the Tribunal from numerous special examples cited here which were contained in the statements of submarine commanders submitted here as well as in the war diaries.

This situation was changed through Admiral Doenitz's order of 17 September 1942 in which he did forbid rescue measures on principle. The decisive sentences are:

"The rescue of members of a sunken ship is not to be attempted. Rescue is contradictory to the most primitive requirements of warfare which are the annihilation of enemy ships and crews."

It has been disputed by the Prosecution that this actually prohibits rescue. It looks upon this order as a hidden provocation to kill the shipwrecked, and it has gone through the press of the world as command for murder. If any accusation at all has been refuted in this trial, then it seems to be this contemptible interpretation of the order mentioned above.

How was this order brought on? Beginning with June 1942 the losses of German submarines through the allied airforce rose by leaps and jumped from monthly average of 4-5 up to 10, 11, 13, during the first half-year of 1942 up to finally 38 boats in May 1943.

Orders and measures were chasing each other from the command of submarine warfare in order to counter these losses. They availed nothing and every day brought fresh reports of air attacks and losses of submarines.

This was the situation when on 12 September it was reported that the heavily armed British troop transport "Laconia" with 1,500 Italian prisoners of war and an allied crew of 1,000 men and some women and children aboard had been torpedoed. Admiral Doenitz withdrew several submarines from current operations for the purpose of rescuing the shipwrecked, and thereby no difference was made between Italians and Allies. From the very start the danger of enemy air attacks filled him with anxiety. While the submarines during the following days devotedly rescued, towed boats, supplied food, etc., they received no less than three admonitions from their commander to be careful, to divide up the shipwrecked, and at all times to be ready to submerge.

These warnings were of no avail. On 16 September one of the submarines with a Red Cross flag laid out was attacked and considerably damaged by an allied bomber while towing lifeboats, one of which was hit and caused losses among the shipwrecked. Following this report the commander sent three more radio messages with the order in case of danger to submerge immediately and under no circumstances to risk their own safety. Again without avail. In the evening of this day, 17 September 1942, the second submarine reported that during its rescue action it had been taken unawares and was bombed by an airplane.

Notwithstanding these experiences and in spite of the explicit order from Fuehrer Headquarters to risk no boats under any consideration, Admiral Doenitz did not stop the rescue action but had it continued until the shipwrecked were taken on by a French warship sent to their rescue.

But this incident was a lesson. Due to the enemy air-scout activity over the entire sea area, it simply was no longer possible to carry out rescue measures without risking the submarine. It was useless to again and again give orders to the commanders to do rescue work only if their own boat was not endangered thereby. Earlier experiences had already shown that, for their human desire to render aid had led many commanders to underestimate the dangers from the air. But it takes a submarine, with the deck clear, at least 1 minute to submerge on alarm, while an airplane can cover 6,000 meters in that time. This means practically that a submarine engaged in rescue action when sighting a plane has not time enough to submerge.

These were the reasons which caused Admiral Doenitz, directly after the close of the "Laconia" incident, to forbid rescue measures on principle. The formulation was motivated by the endeavor to preclude the commander's discretion and to suppress every thought of estimating the danger of air attack in the individual case and then according to the occasion still do rescue work.

It is difficult to judge the actual effects of this order. From 1943 on, about 80 per cent of the boats were fighting against convoys where, even without this order, rescue measures would have been impossible.

Whether or not one or the other of the commanders would have, without this order, risked it once more to concern himself with the lifeboats, nobody can tell with certainty. As is known, there was the order since the middle of 1942 if possible to bring in as prisoners captains and leading engineers. During the almost 3 years of war which followed, this order was carried out not even a dozen times, which proves how high the commanders themselves estimated danger to their boats in rising to the surface.

On the other hand, nothing was more distressing for the crew of the torpedoed ships than to be taken aboard a U-boat, because they knew exactly that their chance of being rescued was much better in a lifeboat than on a U-boat which, with a probability of 50 and more per cent, would not return to its base. I, therefore, together with Admiral Godt, arrive at the conclusion that the "Laconia" order may have cost the lives of some Allied seamen at the same time as it may have saved the lives of others. As this may be, in the face of the enormous losses through the enemy air force the order forbidding rescue was justified. It corresponded completely with the basic idea of the precedence of the own vessel and of the own task, as prevailing in all navies; a principle which I believe I have proven as commonly valid in view of existing British and American orders and practices.

How then does the Prosecution arrive at the conception of seeing in this order an "order to murder"? Its origin is the discussion between Hitler and the Japanese Ambassador Oshima in January 1942, in which Hitler proposed an order to his U-boats to kill the survivors of sunken ships. This announcement, as the Prosecution infers, Hitler doubtless made good and Admiral Doenitz had been carrying it out by the "Laconia" order.

Actually, on the occasion of a lecture on U-boat problems which both Admirals had to give in May 1942, the Fuehrer suggested proceeding actively against the shipwrecked in the future, that is, to shoot them. Admiral Doenitz immediately rejected this sort of action as thoroughly impossible and Grand Admiral Raeder unqualifiedly concurred with him. Both admirals specified the improvement of the torpedoes as the only permissible course of raising the losses among the crews. In the face of the opposition of both admirals, Adolf Hitler dropped his proposal and, following this lecture there, no order whatever was given concerning shipwrecked, let alone concerning the killing of the shipwrecked by shooting.

The destruction of the crews through improved action of the torpedoes is an idea which for the first time appeared in this discussion of May 1942 and which returns in later documents of the naval warfare command. I am therefore to express myself about the legality of such tendency: According to classical international law, the destruction of combatants was a legal goal of war actions, but not of noncombatants.[1] In view of the development of the last wars, one may be doubtful whether this classical theory still has any validity. I am regarding the hunger blockade as the first important infringement upon this theory, which, by cutting all food supply, was aimed at the civilian population, therefore the noncombatants of a country, the victims of which during the world war were estimated at 700,000 people.

Although this blockade[2] was frequently acknowledged as inadmissible according to international law, it was practiced,[3] however; and, therefore, it means breaking with the principle of protection for noncombatants from war measures.[4]

The second great change was brought on by the air war. I do not wish to discuss in detail the unsolvable question of who had started, but only state the fact that the air war, at least in the last two years, was aimed against the civilian population. If, in dozens of attacks on residential quarters of German cities, after an attack, thousands or tens of thousands of civilians were among the victims and only a few dozens or a few hundreds of soldiers, then nobody can assert that the civilian population was not the goal of the attack. The mass dropping of explosives and fire bombs on entire areas does not tolerate a doubt and the use of the atom bomb has produced the final evidence thereto.

In view of the hundreds of thousands of women and children who, in this manner, miserably died in their houses, were buried, suffocated, or burnt to death, I am surprised at the indignation of the Prosecution about the loss of about 30,000 men who lost their lives on the battlefield or on ships which were armed and carried war material and often enough bombs which were destined for the attack on German cities. Moreover, most of these men died in combat, that is, by mines, aircraft, and especially in attacks on convoys, actions which also according to British conception were lawful.

The German Naval Warfare Command regarded these men as combatants. The British Admiralty takes the opposite standpoint in the orders for the merchant navy, although Oppenheim, the well-known British expert of international law, even before the outbreak of the first world war, defended the thesis that the crew is to be treated the same as combatants. He points to the century old, and especially in England, upheld practice to take the crew of merchant ships prisoners of war. He finds this principle confirmed in the 11th Hague Convention of 1907 and recognizes the crew of the merchant navy as potential members of the navy. The legal position in their defense against a warship is described as "entirely analogical to the position of the population of an unoccupied territory who takes up arms in order to combat invading troops."

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[1] Not always recognized by British authors. Compare for example A. C. Bell, A History of the Blockade of Germany, etc., London, 1937, p. 213. The assertion that civilians and armed combat groups were treated as uniform combat groups only since 1914 is one of the most ridiculous statements ever made.

[2] Grenfell, The Art of the Admiral, London, 1937, p. 45, "By the early part of 1918, the civil population of Germany was in a state of semi-starvation; and it has been calculated that, as a result of the blockade, over 700,000 Germans died of malnutrition."

[3] See also note of protest by the Soviet Government to the British ambassador of 25 October 1939, printed as No. 44 in "Documents to the Law of Naval Warfare," Vol. I, published by the Chief Command of the Navy.

[4] See thereto, for example, Wheaton's Intern. Law, 5th Edition, p. 727, Liddel Hart, "The Revolution in Naval Warfare," Observer v. 14.4.46.

It is well known that this unit is a combat one, according to paragraph 2 of the Hague Convention on land warfare, and without considering whether the individual actually makes use or not of his weapon. Accordingly, Oppenheim refuses to make any distinction, among members of occupying forces, between persons who are enrolled in the enemy navy and those who are not.

If this interpretation was already valid before the first world war, it certainly was unassailable in the year 1942, at a time when there were no more unarmed enemy ships and when the neutrals who happened to enter at all the zone of operations were moving in enemy convoys exclusively, which made them, just like enemy ships, solid members of the military system of the enemy forces. They all had lost any peaceful character and were considered as guilty of active resistance. Active resistance against acts of war is not permitted to any noncombatant in land warfare and results in his being punished as a partisan. And should, in the war on sea, a ship's crew be entitled to the combatant's privileges, without suffering any of its disadvantages? Should this crew be permitted to participate in all possible acts of war, even in the firing of guns and underwater bombs, and yet remain noncombatant? Such an interpretation renders illusory the entire concept of a noncombatant. It cannot make any difference whether or not only a part of the crew has anything to do with the serving of the guns. The ship as an entirety represents a fighting unit, and on board a commercial ship more people had actually anything to do with the serving of weapons as on board a submarine.

These men were trained under military supervision; they served the guns along with gunners of the Navy; and the use of their weapons was regulated according to the admiralty's orders. The crews of ships were accordingly combatants, and thus it was a legitimate aim of hostilities to destroy them by the use of arms.

This explains at the same time the sentence about the destruction of ships and crews, which is considered by the Prosecution as a particular sign that the "Laconia" order bore the character of a murder order. There has been enough discussion concerning the meaning of this sentence as an argument for the prohibition of saving. It may, taken out of its context, give cause for misunderstanding. But whoever tries to read the entire order cannot misunderstand it. It appears to me as decisive that, in accordance with its origin, it was never meant to be a murder order and has not been interpreted as such by the commanders. This is proven by the declarations and statements of dozens of submarine commanders. In its context, it could not even have been interpreted as a murder order. In fact, in the next paragraphs it was explicitly ruled that as far as possible certain members of the crew should be brought back as prisoners.

It stands to reason that one must trust a military command with enough cleverness not to conserve, if it gives such a murder order at all, a few witnesses of its crime.

Contrary to the Prosecution, the British Admiralty clearly has not believed in such a murder order. Otherwise, it would not have given order to its captains and leading engineers to escape capture by German submarines, by camouflaging as plain sailors while in the lifeboats. According to the interpretation by the Prosecution, such an order would indeed have meant that the captain would have been shot by the submarine along with all the other members of the crew.

Further on, the Prosecution has quoted the order to attack so-called "rescue ships" as an evidence of the intention to kill shipwrecked people. However, only the individual who is either in the water or in the lifeboat is shipwrecked. A shipwrecked combatant who is again on board a ship is nothing but a combatant and accordingly the legitimate aim of an attack. I have already pointed out, during the hearing of evidence, the shooting down of German sea rescue planes with intent to kill the rescued airmen, in order to show that the enemy command acted according to the very same interpretation.

I shall enter as shortly as possible into particulars of the deposition of witnesses, on which the Prosecution tries to base its interpretation of the "Laconia" order. In my opinion, the deposition of First Naval Lieutenant Heisig, as made here before the Tribunal, is irrelevant. His former affidavit is wrong and we know why, from the witness Wagner. Here, before the Tribunal, Heisig has explicitly denied that in Great-Admiral Doenitz's address to the cadets of the submarine school in September 1942 there has been any question that shipwrecked people should be shot at. Rather has he personally drawn a conclusion out of the words that totalitarian war must be waged against ship and crew, and by the reference to bomb war. His interpretation may be explained by the fresh impression of the bombing of Luebeck which he had just experienced. The other listeners did not share this interpretation; in fact, they did not even think of it. This is evident according to the deposition of three persons who have heard the address. The further assertion of Heisig that an officer unknown to him had taught him, on an unknown occasion, that one should order the men below deck when exterminating shipwrecked people, I consider as an improvisation of his phantasy, which appears to be easily excited. If such had really been the case, then such astonishing an occurrence, which would have been in contradiction with all educational principles of the navy, would have made such an impression on a young officer that he would have conserved some recollection of the full circumstances of such an instruction.

The testimony of Kovettenkapitaen (Lt. Comdr.) Moehle must be taken much more seriously. Because he had—there is no doubt about it—at least hinted to a few submarine commanders that the "Laconia" order demands or at least approves of the killing of shipwrecked. Moehle received this interpretation neither from Admiral Doenitz himself nor from the chief of staff nor from the first assistant, Fregatten Kapitaen (Commander) Hessler; that means from none of the officers who alone would have been authorized to transmit such an interpretation to the chief of a flotilla. How Moehle actually arrived at this interpretation has not found any explanation by the trial in my opinion. He maintains for a fact that Kovettenkapitaen Kuppisch from the staff of the BdU (Commander of the Submarines) had told him the story of "U 386," a boat, the commander of which had been reprimanded for not having shot Allied airmen drifting in a rubber boat. This explanation of Moehle cannot be correct. It is proven beyond any doubt by the war diary and by witnesses that the commander of "U 386" had been reprimanded because he did not take on board the airmen concerned and bring them back. The whole affair with "U 386," furthermore, took place a year after the "Laconia" incident in September 1943 and Korv. Kapitaen Kuppisch who was supposed to have told it had already been killed in action as U-boat commander in August 1943.

It is not for me to discuss how Moehle actually came to give his instruction about the "Laconia" order.

One thing, at any rate, has been proved, Admiral Doenitz and his staff had not caused this briefing to be given nor did they know anything about it. Considering the frequent personal contacts between the U-boat commanders and the staff of the commander of the U-boats, this can only be explained by the fact that the few commanders who Moehle thus briefed did not take his words seriously.

Is Admiral Doenitz now responsible for this interpretation of the "Laconia" order, given by Moehle? Criminal responsibility presupposes in the first place some kind of guilt, i.e., the possibility to foresee the result. Considering the close contact with his flotilla chiefs and commanders, for whom alone the "Laconia" order was intended, Admiral Doenitz could not foresee that a flotilla chief could give such an interpretation to that order without making any attempt for clearing it up with the commander of the U-boats. Such a conduct is beyond anything that could reasonably be expected. Therefore, any guilt is excluded. Criminal responsibility requires another criterion, namely, results must be proved. This also is entirely lacking. The Prosecution has not even made a serious attempt to prove that one of the commanders, briefed by Moehle in that direction, actually shot once at shipwrecked.

As far as we are informed, such a case happened only once in this war, in the case of Kapitaen-Leutnant (Lt. sen. grade) Eck. It is significant that this case was not presented by the Prosecution, but by the defense.

The conduct of Eck has nothing whatsoever to do with the "Laconia" order as the Prosecution wants it understood. It was not concerned with the destruction of human lives, but with the removal of wreckage and floats from which the Allied airplanes could deduce the presence of a German U-boat in this area. For this conduct two of his officers together with him have been condemned to death and hereby punished with a severity which will not be understood any more in normal times.

The two cases, presented by the Prosecution, in which shipwrecked allegedly have been shot at are so obviously unsuitable for proving this accusation that I need not deal with it any further. The testimony about the sinking of the "Noreen Mary" bears the stamp of phantasy in various points and, in the case of the attack on the "Antonico," the intention to destroy shipwrecked is out of question because all was over in 20 minutes and the night was dark.

I was in the fortunate position to present to the Tribunal a compilation of the Naval Warfare Command concerning a dozen cases in which Allied forces had allegedly shot at German shipwrecked. It appears to me that every one of these instances is better than that of the Prosecution and some appear rather convincing. I value, therefore, all the more the sober attitude taken up by the Naval War Command of these cases when giving their opinion on these cases to the Fuehrer's Headquarters.

It namely points out that—

1. Part of the incidents occurred during combat operations.

2. Shipwrecked, swimming in the water, might easily believe that a miss on other targets is aimed at them.

3. So far, no written or verbal order by any command for the use of arms against shipwrecked had been traced.

I can only request that these principles are applied also to the incidents presented by the Prosecution.

In the same written opinion to the Fuehrer's Headquarters, the Naval Warfare Command rejects reprisals by destroying enemy shipwrecked; that was on 14 September 1942, 3 days before the "Laconia order." As the latter came to the knowledge of the Naval Warfare Command as a wireless order, it would doubtlessly have been canceled in accordance with the opposite viewpoint just expressed to Fuehrer's Headquarters, if it had been understood as an order for the shooting of shipwrecked.

And now I am coming to the positive counter-evidence against the opinion of the Prosecution. It consists, in the first place, of the number of the rescued allied sailors. It amounted, according to a survey of the British Minister of Transport in 1943, to 87 per cent of the crews. Such a result is simply not compatible with an order for destruction.

Further on, it has been established that Grand Admiral Doenitz in 1943, that is, after the "Laconia" order, rejected all considerations of actions against shipwrecked.

In a written opinion given to the Foreign Office on 4 April 1943, a directive to the U-boats to take action against lifeboats or shipwrecked was considered unbearable by the Naval Warfare Command, as it was against the innermost feeling of every sailor.

In June 1943 the Grand Admiral, when receiving reports from Lieutenant Commander Witt about British aviators shooting at the shipwrecked of submarines, most decidedly rejected the idea to attack the foe who had become defenseless in combat, as it was incompatible with our principles of warfare.

Summing up, I am convinced that the assertion of the Prosecution that German submarines had received an order to murder the shipwrecked has been strikingly disproved. The Grand Admiral Doenitz stated here that he had never allowed to endanger the spirit of his submarine men by mean acts. With losses from 70 to 80 per cent, he could only replenish his troops with volunteers if he kept the fight clean, in spite of its being tough. And, if the Tribunal remembers the declaration of the 67 commanders in British captivity, it will have to admit that he created a bearing and a spirit which survived the defeat.

I have endeavored to present to the Tribunal the most important facts and several legal considerations regarding naval warfare, so as to clarify the most important problems discussed here from the point of view of the defense.

The problem concerns the examination of the behavior of admirals in naval warfare, and the question of what is permissible according to international law is most closely connected with what is necessary according to the military standpoint. I, therefore, in examining this point of the indictment deeply regret that the Charter of this Tribunal deprives the accused officers of a privilege guaranteed them by the Geneva Convention, i.e., the passing of judgment by a military tribunal making use of the laws and regulations applicable to its own officers. According to article 3 of the Charter, I am not allowed to question the competency of this Tribunal. I can therefore only request the Tribunal to make up for the unfairness that I see in the above-mentioned article of the Charter by applying the same standards where military evaluation and moral justification of actions of these German admirals is concerned as the Tribunal would apply to admirals of their own countries. A soldier, due to his practical knowledge of procedure in warfare, not only of the part of his own country but also of the adversary, is keenly perceptive of the dividing line between combat and war crimes. He knows that the interpretation of international law concerning what is allowed or forbidden in naval warfare is decisively governed by the interests of his country. An insular power like Great Britain, having long and sensitive sea lanes and a strong surface fleet, has always looked at these questions from a different angle than the continental powers. The attitude of the United States, from the renunciation of submarine warfare by the Root Resolution of 1922 to the unrestricted submarine warfare against Japan in 1941, reveals how a change in strategic position entails also a change in legal evaluation. No one can know to what degree the development of air forces and the efficacy of bombs will increasingly force navies under water and render obsolete all previous conceptions of submarine warfare. (Comp. e.g. "Submarines in the

Atomic Era" in New York Herald Tribune, European Ed., 27 April 1946, p. 2.)

For a naval officer these are obvious reflections and they should prevent a man of law from settling controversial questions of law and policy pertaining to naval war at the expense of those whose professional duty it is to direct navies.

In the first world war German submarine war was accompanied by a storm of indignation. It seems significant to me that the English historian Bell judges in these very days, in a paper intended only for official use of the Foreign Office, the right to such indignation, as follows:

"It is an old rule of military honor never to belittle the deeds of an enemy who has put up a stiff and brave fight. If this rule had been followed in England, the public would better appreciate the place which the war between submarines and commerce will occupy in the history of strategy and of the war. It is unfortunate that the cries of terror as well as the unseemly insults of journalists were repeated by responsible people, with the result that the slogans, 'piracy' and 'murder,' entered the vocabulary and have engendered the corresponding feelings in the hearts of the people." (A. C. Bell, Historical Section, Committee of Imperial Defense, "A History of the Blockade of Germany and of the Countries Associated with Her in the Great War, 1914-1918." Before the introduction is a notation: "This history is confidential and for official use only." Quoted from the German edition by Boehmert. "The English Hunger Blockade in the World War," Essen, 1943.)

I am now to treat further the other points of the indictment against Grand Admiral Doenitz which are not concerned with naval war. To begin with, there is the charge of preparation of aggressive wars. It is known how much this very accusation is being contradicted by the professional officers of probably all allied countries. In answer to such attacks in public, Justice Jackson formulated for the press (4 December 1945, "Stars and Stripes," European Ed., vom. 5 December 1945), the ideas of the Prosecution regarding this subject as follows:

"I have made it clear that we do not prosecute these militarists because they served their country, but because they dominated it and lead it into war. Not because they conducted the war, but because they have been driving to war."

If this standard is used to weigh the charge, then, for the defense of Grand Admiral Doenitz against the charge of preparing aggressive wars, I need only point to the result of the evidence. At the beginning of the war he was a relatively young commander; his only task was the training and instruction of submarine crews. He did not belong to the General Staff in the meaning of the indictment and did not participate in any of the addresses which were presented here as proof of war intentions. The charge that he had advocated the occupation of submarine bases in Norway is likewise disproved.

The same applies to the allegation that in 1943 he had proposed an attack upon Spain in order to capture Gibraltar. The conquest of Gibraltar against the will of Spain was absolutely impossible and out of question during the entire war and especially so in 1943.

For Germany the war had reached the stage of defense, yes, even of dangerous setbacks on all fronts at the time when Admiral Doenitz was appointed Supreme Commander of the Navy on 1 February 1943. This fact may be significant for the participation in the so-called conspiracy. The Prosecution is not very clear about the precise moment at which they want to fix the beginning of the responsibility of participation. In the indictment of individuals (App. A of the Indictment), intimate connections with Hitler since 1932 are mentioned. This, however, is ostensibly an error. Admiral Doenitz became acquainted with Hitler only in the fall of 1943 on the occasion of submitting a military report; and in the following years talked to him briefly, and always only about military problems, altogether eight times and never alone. Since, aside from this fact, the defendant never belonged to any organization which is accused of conspiracy by the Prosecution, I see no connection of any kind to this conspiracy prior to 1 February 1943.

The more important is the question of retroaction for joining the conspiracy as has been illustrated by the British prosecutor by the example of the railroad assassins. This idea of guilt, retroactive on past events, is very difficult to absorb for the German jurist. The continental concept of law is reflected by the formulation of Hugo Grotius: "To participate in a crime a person must not only have knowledge of it, but also the opportunity to prevent it."

Considering that the entire legal concept of the conspiracy represents a special creation of Anglo-Saxon justice in our eyes, then this applies even more so to the retroaction of the so-called conspiracy. A judgment laying claim to international validity, one which should be understood by the peoples of Europe and especially by the Germans, must be based upon generally recognized principles of law. This, however, is not the case regarding a retroactive guilt.

To what extent such a legal construction may seem purposeful in combating certain typical crimes, they seem to me entirely inapplicable to the review of events such as are being discussed here.

Admiral Doenitz became the Supreme Commander of the Navy in the course of a normal military career, entirely free of politics. The appointment was based upon the proposal of his predecessor, Grand Admiral Raeder, for whom the proved abilities in the direction of U-boat warfare alone were decisive. An acceptance of the appointment was not required just as little as on the occasion of the appointment to any other military position. Admiral Doenitz entertained the only thought, as any officer might well have done in a similar position, that is, the question whether he would be equal to the task and whether he could accomplish it in the best interest of the navy and of the people. All other considerations which the Prosecution apparently expected of him during this period, namely, the legitimacy of the Party program and of the policy of the Party from 1922 on, as well as of the German internal and foreign policy since 1933, can but be fictions; they have nothing to do with the facts. Fictions of such nature are not limited by time nor by reality. Is the responsibility for past measures, on taking over a high position to extend only to acts of the present cabinet, or is it to extend to acts of former cabinets and up to what period? Is it to include internal and foreign policy of one's own country or also of those of one's allies? Such considerations are logical and cannot be refuted; however, they lead to unacceptable results, and show the impracticability of the idea of retroaction regarding the so-called conspiracy.

Only to measure by exact standards the participation in such a conspiracy is difficult enough if events not of a criminal, but of a military and political nature are involved. Of what meaning are such concepts as "voluntary accession" and "knowledge of the common plan" when in times of the greatest danger an officer assumes the task to prevent the collapse of the sea warfare?

Even the Prosecution seems to realize this. For, corresponding to their general idea, they attempt to link Admiral Doenitz with the conspiracy in a political way. This is accomplished by the assertion that he became a member of the Reich Cabinet by reason of his appointment to the Supreme Command of the Navy. This allegation is based upon the decree whereby the Commanders in Chief of the Army and of the Navy were invested with the rank of Reich Minister and upon the order of Hitler were to participate in the Cabinet meetings.

It is evident that one is not actually a Reich Minister merely by being invested with the rank of Reich Minister. Also, he is not a member of the Cabinet, if one is only permitted to participate in it upon special orders. This implies exactly that he was only to be consulted on professional problems, but never had the authority to gather information about other departments. One can not, however, speak of a political task and, consequently, of a political responsibility without the existence of such an authority. For an activity as a minister, any legal basis is lacking. According to the German compulsory service law, there existed for the entire Wehrmacht but one minister, the Reich War Minister. This position remained unoccupied after the resignation of General Field Marshal v. Blomberg. The business of the Ministry was conducted by the Chief of the High Command of the Wehrmacht. A new Ministry was not created, neither for the Army nor for the Navy. The Commanders in Chief of the Army and of the Navy, therefore, would have had to be ministers without portfolio. Since, however, they headed a department, namely, the army and the navy, such an appointment would have constituted a contradiction to all usages of the state law. The task to countersign such laws, in which the minister participates within his jurisdiction, is to be considered as the basic symbol of all ministerial activity.

There is not a single law which has been countersigned by the Supreme Commander of the Navy. I have shown this to the Tribunal by the example of the Prize laws. That is to say that, even by and rather because of taking into consideration of the legal standards of a democratic system, the Supreme Commander of the Navy cannot be designated as a member of the Reich Cabinet, because he lacked all authority of participation in legislative acts and every collective responsibility for policies assumed. His task was and remained a military one even though, for reasons of etiquette, he was put on an equal basis in rank with other Reich ministers.

The Prosecution realized that a Reich Government in the constitutional sense no longer existed during the war and, consequently, states that the actual governing was carried out by those who participated in the discussions of the situation in the Fuehrer Headquarters.

As all witnesses examined here stated, it was dealt here with events of a purely military nature, where incoming reports were presented, military measures discussed, and military orders issued. Questions of foreign policy were mentioned exceptionally, only if they had any connection with military problems; they were, however, never discussed and no decision was rendered on them in these Fuehrer's conferences on the situation. Internal policy and the security system was not on the plan for discussion at all. In so far as non-soldiers participated, they were attendants who gathered information for their respective departments. The SS Reichsfuehrer or his deputy were present for the Command of Waffen SS and during the last year of war also for the reserve Army.

The Grand Admiral always participated in these Fuehrer conferences when he was at the Fuehrer's Headquarters. Notes taken down by whoever accompanied him on all these meetings and discussions of the Supreme Commander are all in possession of the Prosecution. As the Prosecution has not presented a single one of these notes, from which it would appear that the Supreme Commander participated in reporting on or in decisions of affairs of political nature, one can assume that such notes do not exist. Thus, the testimony of witnesses has been confirmed, according to which the Fuehrer conferences had nothing to do whatever with governing in a political sense, but were an instrument of purely military leadership.

Therefore, an overall responsibility of the Grand Admiral for all events that happened and occurred since 1943, and which, in the course of this trial, have been denoted as criminal, does not exist. Consequently, I shall deal only with those individual allegations by which the Prosecution tries to directly connect Admiral Doenitz with the conspiracy. To proceed on that way, I believe I am the more justified, as a short time ago the Tribunal denied me the right of cross-examination of witnesses in the Katyn case with the argument that no one was accusing Admiral Doenitz in connection with the Katyn case. I conclude herefrom that, at any rate, in the eyes of the Tribunal, he is accused of such cases only wherein he allegedly directly participated.

To begin with, this applies to the Fuehrer's order for the extermination of sabotage commandos, dated 18 October 1942. The Prosecution has tried to establish that this order had been expounded to Admiral Doenitz in detail, together with all possible objections, shortly after his assumption of the position of Commander-in-Chief of the Navy. It has failed to establish such a claim. In fact, Doenitz, as he himself admits, did read or had explained to him the order in question, in fall 1942, in his capacity of commander of submarines, and in the same form in which the front commanders received it. I do not wish to speak here of the circumstances which led to objections against this order on the part of the OKW. Indeed, not all these circumstances could be discernible to one who received this order at the front. For such a one it was a matter of reprisal against saboteurs who were only externally soldiers, but did not fight according to the regulations which are binding on soldiers. Whether such reprisals were admissible at all according to the Geneva Convention, and to what extent, was not capable of being judged nor did it fall within the competence of the recipient of the order. Any superior officer, at any rate, has probably recognized that the order not to grant any pardon and to deliver such persons, in certain cases, to the SD, was in itself an offense against the rules of war. However, as the essence of any reprisal is to avenge a wrong on the part of the enemy with wrong on one's own part, such recognition does not prove anything concerning the legitimacy or illegitimacy of the reprisal order. If no one but the government of the state is competent to order reprisals, then hundreds or thousands of German officers cannot be required today to consider themselves likewise competent, and to presume to verify orders whose actual and legal bases were entirely unknown to them. In this case the principle prevails, at least for the front commander, that the subordinate may, when in doubt, rely on the order as given. (Hugo Grotius, De jure pacis ac belli, Book II, Chap. XXVI, par. 4. "He can believe that in a matter of doubt he must obey his superior.")

Now, the Prosecution seems to be of the opinion that Admiral Doenitz, a few months later, when he had become Commander-in-Chief of the Navy, had the opportunity and also the obligation to inform himself as to the basis of the order issued by the command. This requirement fails to recognize the duties of a commander-in-chief of the navy. He has to wage naval war. The whole German naval war, especially the submarine war, was, in the spring of 1943, owing to huge losses inflicted by the enemy air force, on the verge of collapse. These were the worries with which the new commander-in-chief had to cope in addition to an abundance of new problems concerning the navy which were coming up. How can one require such a man, as in the quietest of times, to cope with an order of remote date which had nothing whatever to do with naval warfare. On the contrary, a special paragraph explicitly excluded prisoners taken during naval operations.

I must insert something concerning the circumstances of giving command. The naval units were under the control of the naval command only in those matters which belonged to the duties of the navy, i.e., naval warfare and artillery coast defense.

Concerning so-called territorial questions, they were not subordinate to the naval warfare command to the Wehrmacht commander of the theater of war in which their basis was established. Orders concerning such measures of war on land were given without any collaboration on the part of the naval warfare command, and their execution was not reported to it. Just as hardly anyone can think seriously of holding a general responsible for the German submarine war, just so little in my opinion does it seem justified to hold an admiral responsible for orders given in land warfare.

Such a routine for territorial duties also explains the complete ignorance of the Admiral of the fleet and of his colleagues in the naval warfare command about the delivery to the Security Service of the crew of the Norwegian torpedo boat MTB 345 after their capture by units of Admiral von Schrader. As demonstrated by the depositions of the witnesses and the records of the Oslo war crimes court, the naval warfare command received only a combat report concerning the capture of the vessel and the number of prisoners. Any further details, the discovery on board of material for sabotage and of civilian suits, the finding of sabotage orders, and the treatment of the crew as saboteurs according to the order given by the command, were dealt with as a territorial matter between Admiral v. Schrader and the Wehrmacht commanding officer for Norway. The decision concerning the fate of the crew came from the Fuehrer headquarters in reply to a question of Gauleiter Terboven. Not only there is no evidence that the naval warfare command took part in these territorial questions, but this must be considered as refuted according to the evidence submitted and of the chain of command which has been demonstrated.

I consider as the second attempt of the prosecution to establish a participation in the so-called conspiracy for committing war crimes, the submitting of Admiral Wagner's record concerning the withdrawal from the Geneva convention in spring 1945. According to this, the Fuehrer pointed out in a discussion of the situation on February 2 that the enemy propaganda concerning the good treatment of prisoners of war clearly influenced the units fighting on the Western front, and that many cases of going over to the enemy were being reported. He ordered an examination of the question of a withdrawal from the Geneva convention. Thus, he wanted to convince his own soldiers that they could no more rely upon good treatment as prisoners of war, and to create accordingly a reaction against the enemy propaganda. Two days later Hitler reverted to this idea, but now another reason was put into the foreground. He defined the enemy warfare in the East and the bomb attacks on the German civilian population as a downright renunciation of international law by the enemy, and desired, on his side, to free himself from any obligations by withdrawing from the Geneva convention. Once more, he wanted the Wehrmacht's opinion and addressed himself directly to the Grand Admiral. The latter did not answer. The point of view of the military leaders on this matter was unanimously in the negative.

On the next day, and preceding the discussion of the situation, a 10-minute conversation took place between Grand Admiral Doenitz, Colonel General Jodl and Ambassador Hewel; in the course of this conversation Doenitz expressed his negative attitude. According to the notes of Admiral Wagner he said that "it would be better to take the measures considered to be necessary without previous announcement and to save, at any rate, one's face before the world."

The Prosecution perceives herein the readiness and the design to expose hundreds of thousands of Allied prisoners of war to arbitrary murder.

Admiral Doenitz himself does not remember any such sentence. This is not surprising, as there is no question of a record, but of a condensation of a long conversation into four sentences. The precise wording was done the day after the conversation only, by Admiral Wagner. The latter declares himself that the Grand Admiral had disapproved of any "wild measures" which were apt to put us in the wrong from the beginning, and had considered as permissible only such measures which, according to the enemy's attitude, were actually justified and imperative in each case. As Wagner, the author of the transcript, should know himself best what he meant with this, I personally cannot add anything to this declaration. The interpretation of the Prosecution is not supported by any other circumstances. There was no question at all of keeping any measures secret. They would have to be made known, no matter whether they were meant to deter our own deserters or to make reprisals.

Wagner's note does not mention anything about any kind of concrete measures to be taken, and all witnesses that were present at this "Fuehrerlage" (discussion on the situation in Hitler's Hq.) state that not a word was spoken about that subject. The idea to kill prisoners of war could therefore not possibly occur to any of the participants in the discussion noted down by Wagner.

Now it came to light, by the statements of the defendants Ribbentrop and Fritzsche, that Hitler evidently, besides the action concerning the generals, had prepared another one in which only Goebbels and Himmler were to participate and which by chance came to Ribbentrop's knowledge. In this action the shooting of thousands of prisoners of war seems to have been taken into consideration as a reprisal against the air attack on Dresden. Hitler, very wisely, did not utter a murmur indicating such ideas to the generals. This action was not taken up any further and reprisals were not executed.

And now I come back to facts. It is a fact that Admiral Doenitz disapproved of the leaving the Geneva Convention and that Hitler, owing to the attitude of all military leaders, who clearly opposed it, did not follow up the idea any more. It is a fact that no measures violating international law were taken by the Germans as result of the remark criticized by the Prosecution, and it is lastly a fact that the enemy sailors who were made prisoners were grouped in a prisoner-of-war camp of the navy and that they were treated in an exemplary way to the last day of the war.

Who in his own department behaved as Doenitz did with regard to prisoners of war of the navy, may reasonably not be charged with having thrown overboard all standards of law and morals with regard to prisoners of war. As certified by an English commander, when the prisoner-of-war camp of the navy was taken over by British troops, all prisoners without exception said that they had been treated with "fairness and consideration." The Tribunal will no doubt appreciate such unanimous statements after what, in these proceedings, otherwise has been heard of failures in the treatment of prisoners of war, and not only on the German side.

If I now occupy myself with the conspiracy to commit crimes against humanity, I should like to draw your attention to the fact that Admiral Doenitz is not accused by Article 4 for directly having committed crimes against humanity. In the individual accusation, not even participation in the conspiracy to commit crimes against humanity was intended. That, I would say, is the admission that there is, in fact, no relation between his activity and the crimes against humanity spoken of by the Prosecution. Nevertheless, the Prosecution has presented some documents which should prove a participation in the responsibility for certain crimes against humanity.

In judging these documents, the most important question is again and again: What did Admiral Doenitz know of these crimes?

To this subject I should like to clear up one point. During the whole war he lived at his staff headquarters, first on North Sea coast, since 1940 in France, and in 1943 for a short time in Berlin and then in the camp "Koralle" near Berlin. When he was at the Fuehrer Headquarters, he lived with the navy staff there. Off duty he associated almost exclusively with naval officers. This may have been a weakness, but it is a fact which explains the lack of knowledge about certain occurrences.

The fact that the defendant forwarded a proposition of the Ministry for armaments to employ 12,000 men from concentration camps as workers in the shipyards proves for the Prosecution that Admiral Doenitz knew and approved of the arrest of countless innocent people and their ill-treatment and killing in concentration camps.

He actually knew, of course, that concentration camps existed and he also knew that, besides the professional criminals, people arrested for political crimes were kept there. As already explained here, the keeping in custody of political adversaries for reasons of safety is a mode of acting executed by all states in times of danger. Knowledge of such an institution can therefore incriminate nobody. However, an unusually high number—out of proportion with the number of the population—of political arrestees may stamp a regime to a regime of terror. Taking into account a population of 80 million and the 5th year of a grim war, even twice or three times the number of 12,000 men mentioned by Admiral Doenitz would not yet be the sign of a regime of terror.

The Prosecution will hardly want to assert this. He has stated here as a witness that the Commander-in-Chief of the Navy, as well as his collaborators and the overwhelming part of the German people, did not know of the abuses and killings that occurred in concentration camps. All that the prosecution put forward against this are assumptions, but no proofs.

I will therefore, to this point, only refer to the statement of the then Minister for Armaments, Speer, according to which the inmates of concentration camps were much better off than in camp, when they worked in industry and that these jobs were much desired. The proposition forwarded, therefore, did not signify anything inhuman, on the contrary, rather the opposite.

In the same proposition there is a suggestion to take energetic measures against sabotage in Norwegian and Danish shipyards where seven of eight new constructions had been the victims. If needs be the personnel should be entirely or in part replaced by "CC workers." Because, so it says, a sabotage of such dimensions can only be possible if all the workers silently condone it. We have here a proposition for security measures in which workers who actively or passively participated in sabotage are kept in a camp close to the shipyard whereby their connection to sabotage agents was to be cut off. I do not believe that juridical objections can be raised against such measures of security.

According to the practice of all occupation troops even collective punishment measures would be justified in such cases. (cf. Wheaton's International Law, 5th Ed. Page 543/54.)

Actually, the proposed measures were never carried out, and the Prosecution very likely presents them only for the purpose of bringing against Admiral Doenitz a general accusation of brutal attitude towards the inhabitants of occupied territories. For this purpose, it even refers to a statement of the Fuehrer at a conference on the military situation in summer 1944, according to which terror in Denmark must be fought with terror. The only part Admiral Doenitz had in this statement was that he heard it and that his companion, Admiral Wagner, wrote it down. The Navy had no part in it, nor did it take any measures as result of it.

In contrast to this line of evidence submitted by the Prosecution, I should like to emphasize the attitude which Admiral Doenitz actually showed towards the population of the occupied territories. There is before the Tribunal a survey concerning the administration of justice by the Naval Court for the protection of the inhabitants of the occupied territories against excesses of members of the Navy. The survey is based on an examination of about 2,000 delicts, and part of the judgments rendered are given together with circumstances and reason. Judging from that, one can fairly say that the Naval Courts protected the inhabitants in the West as well as in the East with justice and strictness, that is to say, lives as well as property and the honor of women.

This meeting out of justice was constantly supervised by the Commander-in-Chief of the Navy as the highest legal authority. According to court regulations, he was competent for the confirmation of death penalties meted out to German soldiers.

The shortness of time does not permit one to go into detail with these judgments. What is formulated in one of them applies to all: All soldiers must know that also in occupied territory life and property of others will be fully safeguarded. This was the general attitude in the Navy and the severity of the penalties inflicted proves how seriously it was taken.

I need say only a few words concerning the order of spring 1945, in which a German prisoner of war, an NCO, was presented as an example, because he had in a prison camp unobtrusively and according to plan had communists liquidated, who attracted attention. As Wagner recalled, it was actually the liquidation of an informer. But the facts were camouflaged in the manner mentioned in order not to give enemy intelligence any clue as to the camp and the person of the NCO. That this order in its true principle was capable of being justified cannot be doubted by anyone, in view of the enormous number of political murders which have been committed with the toleration or assistance of governments engaged in the war and the perpetrators of which are today extolled as heroes. I cannot, however, seriously consider that the unfortunate camouflaged wording could be proof of a general plan to liquidate communists. An order issued for the protection of communists will reveal the true circumstances.

A sergeant had stolen in a hospital blankets which were intended for Soviet prisoners of war and had broken out a dead prisoner's gold teeth. This sergeant was condemned to death by a naval court and executed after the sentence had been confirmed by the commander-in-chief. Finally, the Prosecution also established a connection with the Jewish question through a statement in which the Grand Admiral speaks of the "lingering poison of Jewry." Here I wish to say:

Doenitz knew as little of the plan for the destruction of the Jews as he did of its execution. He knew of the evacuation to the Government General of Jews living in Germany. I do not think that this evacuation can be condemned at a time when deportations of Germans on a much larger scale are taking place before the eyes of a world silently looking on. Here, too, I refer to a sentence of long penitentiary terms against two German sailors. Together with some Frenchmen, they had robbed French Jews. From the opinion of the court, I again quote a sentence which characterizes the general attitude: "That the crimes were committed against Jews does not excuse the defendants in any way."

In the same way, it seems to me that the efforts of the Prosecution to include Admiral Doenitz in their interpretation of conspiracy by way of the so-called fanatical Nazi have failed.

He was neither a member of the Party nor was he ever politically prominent until his promotion to Commander-in-Chief of the Navy. The assertion of the Prosecution that he became Commander-in-Chief of the Navy because of his political attitude is without any foundation. He had no reason to participate in National Socialism afterwards, because to him, as a professional officer, every political activity was forbidden according to the Compulsory Service Law. However, he, too, like millions of other Germans, recognized the unique success of Hitler's conduct in social and economic fields and, of course, also the liberation from the obligations of Versailles, which concerned him as a soldier especially. Therefore, he served entirely without political activism but in loyalty to the National Socialist State when he received his promotion to commander-in-chief.

Therewith, two new elements arose in his relations to National Socialism. There was first his personal contact with Adolf Hitler. Like almost everyone else who had personal connection with this man, he, too, was most deeply impressed. To the respect for the Head of the State, and faith to the Supreme Commander, which the professional officer is trained in, was added the admiration for the statesman and strategist. It is difficult to understand completely such an attitude from the information as conveyed by this trial. I neither feel qualified nor capable to judge a personality like Adolf Hitler. But one thing seems certain, namely, that with the art of an expert he skillfully concealed the camouflage—from the human standpoint, objectionable traits of character—from those of his coworkers to whom he did not dare to reveal this part of his nature. The Hitler with whom the new Commander-in-Chief of the Navy became acquainted at that time and whom he venerated was therefore entirely different from the one which the world—rightly or wrongly—sees today.

The second new element in the relations between the grand admiral and National Socialism consisted in the fact that in the performance of his military duties he necessarily came in contact with the political authorities of the Reich. Whether he needed more men, more ships, or more arms it was in the end always political authorities with whom he had to discuss matters. In order to be successful in his demands, it was necessary that all political mistrust be eliminated at the very start. He did this intentionally and demanded the same of his subordinates. To him the Party was not an ideological factor, but rather the actual representative of the political power. He was linked with it in the common aim to win the war. For the achievement of this aim, he considered it as his ally. But, for the advantages which one expects of an ally, one must be willing to make certain sacrifices and to overlook certain faults and to ignore controversies.

The connection with the Fuehrer, however, and the contact with the Party which were concomitants of his position and of his duties as a Commander-in-Chief of the Navy, never led him to participate in anything for which he could not assume the responsibility before his conscience. Exactly some points of the prosecution prove this. The Fuehrer demanded action against the shipwrecked; Admiral Doenitz rejected it. The Fuehrer was for withdrawal from the Geneva Convention; Admiral Doenitz was against it. He stubbornly and successfully resisted the Party's influence upon the Armed Forces. Thanks to his resistance, the National-Socialist educational officers (Fuehrungsoffiziere) did not become political commissars, but were as genuine officers merely advisers to their commander, who retained the sole responsibility of leadership of his unit. The transfer of proceedings against soldiers on political grounds from the military courts to the people's courts (Volksgerichtshof), which had been advocated by the Party, was prevented by Admiral Doenitz until the winter of 1944–45 and afterwards, in spite of a Fuehrer order, never carried out in the Navy. Thus, he never identified himself with the Party and, therefore, certainly cannot be held responsible for its ideological endeavors or its excesses no more than in foreign politics a government would be ready to assume the responsibility for such things committed by an ally.

I do not by any means want to give the impression that Admiral Doenitz was not a National Socialist.

To the contrary, I want to exactly use him as an example to prove the incorrectness of the thesis that every National Socialist as such must be a criminal. This Tribunal is the sole instance where authoritative personalities of the allied chief powers are occupying themselves intensively with the last 12 years of the German past. It is, therefore, the only hope of very many Germans for the removal of a fatal error which caused the weaker characters of our nation to become hypocrites and thus prove a decisive obstacle on the road to political recovery. When, after these explanations, I am entering into particulars of the charge that Admiral Doenitz had, out of political fanaticism, protracted the inevitable surrender, then I am doing so because of a particular reason. This charge, which does not seem to have anything to do with the indictment before an international tribunal, weighs particularly heavy in the eyes of the German people. This nation truly knows what destructions and what losses it has yet endured in the months from February until May 1945. I submitted declarations of Darlan, Chamberlain, and Churchill from the year 1940, in which these statesmen in a critical hour of their country called for desperate resistance, for the defense of every village and of every house. Nobody will conclude therefrom that these men were fanatical National Socialists. The question of unconditional surrender is, indeed, of such colossal import for a nation that, in fact, it is possible only after the events to judge whether a statesman who had to face this question did or did not do the right thing. Admiral Doenitz, however, was not a statesman in February 1945, but the supreme commander of the navy. Should he have requested his subordinates to lay down arms at a time when the political authority of the state still considered military resistance as opportune and necessary? Nobody will demand this in earnest.

To me, the question appears to be far more difficult, whether he, whom Hitler esteemed so much should not have had the duty to point out to Hitler with all due clearness the hopelessness of a prolonged resistance.

Personally, I would be inclined to affirm such a duty towards his people, if he had himself considered at that time a surrender as justified. He has not done so, and has stated the reasons herefor. Surrender implies stopping the armies and stopping the population. The German army on the Eastern front—still more than 2 millions strong in February 1945—and the entire civilian population of the German eastern provinces would therefore have fallen into the hands of the Soviet armies and this, in a bitter cold winter month. Admiral Doenitz, therefore, was of opinion—shared by Colonel General Jodl—that the human losses occurring in such a manner would have been far greater than those which a protracting of the capitulation until the warmer season should of needs have caused. Only in future years, when more exact evidence concerning casualties of the army and of the civilian population, both before and after the surrender in the East and in the West, will be available, there will be a possibility to judge the objective truth of such an interpretation. But it may yet be said today that such arguments were exclusively founded upon a stern consciousness of responsibility for the life of German people.

The very same consciousness of responsibility caused him, after his assumption of the office of head of the state on May 1st 1945, to cease hostilities against the West, but to protract, on the contrary, the surrender to the East for a few days, days in which hundreds of thousands were able to escape in a Western direction. Since the moment when he got—to his own complete surprise—a political task, he has avoided with an intelligent hand a threatening chaos, has prevented desperate acts of masses without leaders, and has assumed responsibility for the German people, for the gravest action which a statesman can make at all. To come back to the beginning of the indictment, he has not done anything to start this war, but taken the decisive steps to end it.

Since that moment the German nation has learned much what it did not expect, and more than once the unconditional surrender, which the last head of the state has carried out, has been pointed out. It is for the Tribunal to decide whether, in the future, this nation will be referred to the binding value of the signature of a man who is being outlawed as a criminal, in front of the whole world, by his very partners in the treaty.

In the beginning of my statement I have referred to the doubts which any trial against war criminals is bound to induce in the heart of any lawyer. They weigh upon everyone who bears a co-responsibility for such a trial. I could not better mark the task of all the responsible persons than by quoting the words coined by a British attorney about the trials before the German Reich court in the year 1921:

"The War Criminals' trials were demanded by an angry public rather than by statesmen or the fighting services. Had the public opinion of 1919 had its way, the trials might have presented a grim spectacle, of which future generations would be ashamed. But, thanks to the statesmen and the lawyers, a public yearning for revenge was converted into a real demonstration of the Majesty of Right and the Power of Law." (Claud Mullins, The Leipzig Trials, London, 1921.)

May the verdict of this Tribunal be valid in a similar way before the judgment of History.

2. FINAL PLEA by Karl Doenitz

I should like to say three things:

Firstly, you must judge the legality of the German submarine warfare, if your conscience dictates you to do so. I consider this conduct of the war to be justified, and I have acted according to my conscience. I would have to do exactly the same all over again. My subordinates, on the other hand, who have carried out my orders, have acted in the fullest confidence in me and without there being a shadow of doubt regarding the necessity and legality of these orders. In my opinion, no later judgment can deprive them of the trust in the honesty of a fight for which they voluntarily have made sacrifice after sacrifice until the last hour.

Secondly, much has been said here about a conspiracy which is alleged to have existed among the defendants. In my opinion, that assertion is a political dogma. As such it cannot be proved, but can only be believed or rejected. Considerable portions of the German people will never believe, however, that such a conspiracy could have been the cause of their disaster. Let politicians and jurists argue about it; they will only make it harder for the German people to secure for themselves the recognition from this trial of that which is decisive and important for its attitude regarding the past and the reconstruction of the future. That is the recognition that the Fuehrer principle as a political principle is wrong. With regard to the military leadership of all armies in this world, the Fuehrer principle has proved itself in the best possible way. On the strength of this recognition, I consider this also right with regard to political leadership, particularly in the case of a nation in the hopeless position in which the German people found itself in 1932. The great successes of this new government, an entirely new feeling of happiness on the part of the entire nation, seemed to prove it right. But if, in spite of all ideals, all decency, and all devotion on the part of the masses of the German people, no other final outcome has been achieved through the Fuehrer principle than the misfortune of this people, then that principle as such is wrong, wrong because apparently human nature is not strong enough to utilize the powers in that principle for a better end, without their falling victims to the temptation of that power.

Thirdly, my life was devoted to a mission and with that to the service for the German people. As the last Commander-in-Chief of the German Navy and as the last head of the State, I consider myself responsible for everything that I have done and left undone.

XV. ERICH RAEDER

1. FINAL ARGUMENT by Dr. Walter Siemers, Defense Counsel.

Gentlemen of the Tribunal,

In my final pleading for the defendant Grand-Admiral Dr. Raeder, I should like to keep to the order I chose for my Document Book and for the whole presentation of evidence. I think a survey of the whole case will thus be easier.

Raeder, who has just turned 70 years of age, has been, ever since the age of 18, that is to say for half a century or so, and in an eventful period, exclusively a soldier, body and soul. Although he has never known anything but his duties as a soldier, the Prosecution has accused him, in this major Trial against National-Socialism, not only as soldier, namely as commander-in-chief of the German navy but—what is singular and decisive—as politician, as political conspirator and as Government member, altogether 3 things which he, in truth, never was.

I am, therefore, faced with the singular task of defending

Raeder as politician, although it was precisely, as I shall demonstrate, his life principle to be completely detached from politics as officer, and to command an Officers' Corps and a navy which were likewise committed to remain entirely free from politics. If the Prosecution levels such manifold and grave accusations at Raeder, this is primarily due to the fact that they have constructed an entirely foreign notion of the German Wehrmacht namely the notion of an Admiral responsible for the foreign policy and for the outbreak of a war. I shall stand up against this conception and demonstrate that this conception is equally unjustified and unfounded as regards Hitler's National-Socialist State. True, Hitler has repeatedly placed politics in the forefront of the Nation, and endeavored to educate the Nation in one political direction only. Foreign countries know this, and they would therefore be all the more surprised by the fact that Hitler refrained from such political interference in one single instance. Every administration, every organization, and every police institution was run by Hitler on political principles with the single exception of the Wehrmacht. The Wehrmacht and indeed the navy in particular remained a long time and far into the War absolutely unpolitical, and not only did Hitler give Raeder an assurance to this effect, but Hindenburg as President had also given the same assurance. This explains the fact, which has also been made clear in this trial, that up to 1944 an officer could not be a member of the Party or suspended his membership if he were in the Party.

After I have made these preliminary reflections, it will be understood why Raeder, as shown by his interrogation, was disconcerted and amazed by these accusations which amount to a political charge. A man who is altogether soldier cannot understand why he is suddenly, and without any relation to his military duties, made responsible for things which at no time came within the compass of his activity.

I shall naturally discuss the military accusations, with the exception of the U-Boat warfare, which, for the sake of uniformity, has already received the attention of Dr. Kranzbuehler in his final speech for Raeder too.

It will be seen from other military accusations—as for instance, in the case of Norway and Greece — that time and again the discrepancy between the points of view of politics and of the military is the following: Raeder acted as Commander-in-Chief on the basis of military considerations, and the Prosecution calls him to account out of political considerations, thus considering military actions as political.

I

The first case of this discrepancy just described lies in the accusations which have been raised against Raeder already for the period before 1933, which means before National-Socialism. For this time the peculiarity has to be added that Hitler, the head of the alleged conspiracy for the waging of wars of aggression, does not even yet reign in Germany, and yet there is already supposed to exist a common conspiracy between Hitler and a part of the defendants. This is all the more surprising, as Raeder, as a naval officer and since 1928 as Chief of the Naval Command (Chef der Marineleitung), had at that time nothing, but really nothing, at all, to do with National-Socialism, and he did not even know Hitler and his coworkers in the Party. The accusations concerning the violations of the Versailles Treaty are included in the conspiracy by the Prosecution, although the violations were not carried out under Hitler's leadership, but under the leadership or with the approval of the then democratic governments in Germany. This shows that the indictment does not only want to hit National-Socialism with this trial, as has been emphasized again and again during the war and after the collapse, but, beyond it, it affects large circles in Germany who had nothing to do with National-Socialism and partly even were direct enemies of National-Socialism.

1. For just this reason it was so extraordinarily important for me, in the presentation of evidence in the Raeder case to clear up the question of the violation of the Treaty of Versailles in minute detail, and with the approval of the court I have tried to do this. I am of the firm opinion that I have succeeded. I do not need to discuss in detail the precisely treated infractions which the Prosecution has produced in document C–32. It should be sufficient if I refer to the extensive presentation of evidence, as well as the following facts:

Every single point was a mere trifle or else was a military measure, like for example, the antiaircraft batteries and suchlike, which were based exclusively on ideas of defense. Raeder has plainly admitted that treaty infractions occurred, in which, however, the smallness of the infractions showed that these measures could not possibly be connected with an intention to wage a war of aggression. Going beyond this, I only need to point out that from the legal point of view a treaty violation cannot ipso jure be a crime. Surely the violation of a treaty between nations is no more permissible than the violation of a contract between private firms in commercial law. Such a violation is, however, not a punishable action, much less a crime. Also, according to the argument of the Prosecution an action would be punishable only if the violation were the result of a criminal intention, and so was aimed at aggressive war against the Kellogg Pact. However, the prosecution authorities themselves can no longer maintain this and have indirectly admitted it by no longer taking up these points during the cross-examination of witnesses.

2. The case is somewhat different with the charge only discussed in detail by the Prosecution during cross-examination concerning the participation of the German navy in U-boat constructions in Holland, for which the Prosecution has relied upon C–156, the book by Naval captain Schuessler: "The Navy's Struggle Against Versailles," as well as on the statements contained in the notes of the naval historian, Admiral Assman, in document D–854.

These documents prove that the German navy had a part in a U-boat designing office in Holland, namely, the firm N. V. Ingenieurskantoor voor Scheepsbouw. This participation falls in the period before the navy was under Raeder's command; the court will recall that Raeder did not become head of the navy until 1 October 1928, whereas participation in the Holland designing office dates back to 1923 and the following years. I beg to note, however, that in not a single case was a U-boat built for the German navy and that consequently no U-boats were purchased or put into commission by the German navy, either. In this connection I refer to the Versailles Treaty, Raeder exhibit 1. In article 188 ff. of the Treaty of Versailles are the regulations about the navy. According to article 188 Germany had assumed the obligation of delivering her U-boats to the Allied Nations, or of dismantling them. This obligation Germany fulfilled completely. Moreover, article 191 stipulates the following:

"The construction and purchase of all underseas vessels, even for commercial purposes is forbidden in Germany."

It appears from this clear clause of the Treaty that the participation in Dutch firms was not a violation of the Treaty of Versailles. According to article 191, Germany was only forbidden to construct or purchase U-boats, moreover, strictly speaking, only in Germany. As a matter of fact, no U-boat was built in Germany against the Treaty. But as a matter of fact, no U-boat was built for Germany abroad, either. Participation in a foreign submarine designing office was not forbidden, nor was this the meaning of the Treaty of Versailles. The decisive point was merely that Germany did not create a submarine force. The navy, however, was permitted to participate in a designing office, so as to be kept informed in this way about the field of modern submarine construction and to gather information for the future, and thereby to lay the foundation for a possible construction of submarines later on, when permitted, by educating a technically trained cadre. (*See Raeder Exhibit 2, Lohmann Affidavit under I.*)

The above-mentioned documents, submitted by the Prosecution, prove that the submarines designed by the Dutch firm and built abroad were put into service abroad, namely in Turkey and by Finland.

Even if one takes the point of view that designing work also was prohibited, then what has been said in paragraph I is also valid here; the designing was limited to only a few submarines, so that the small number of them in itself proves that there cannot have been any intention to wage wars of aggression.

3. Even if the High Tribunal is unwilling to follow my preceding train of thought without more further development, going even beyond this, the lack of an aggressive intention appears from the fact that the trivial violations of the treaty are in a certain way compensated for, I take the liberty to refer to the second affidavit of Admiral Lohmann, Raeder Exhibit 8. It appears from this document that according to the Treaty of Versailles Germany was allowed to build 8 armored ships, but, however, only built 3 armored ships, and it appears further that instead of 8 cruisers, only 6 cruisers were built up to 1935, and instead of 32 destroyers or torpedo boats only 12 destroyers and no torpedo boats were built. As a matter of fact, the navy stayed far behind what was permitted by the Treaty of Versailles, with respect to the really important weapons, and especially in those which may be considered as weapons of offense and indeed to such an extent that in comparison the trivial violations in naval matters hardly count.

4. According to the Weimar Constitution of 11 August 1919, articles 47 and 50 (*Raeder Exhibit 3*) the President of the Reich has Supreme Command of all the armed forces. In order to be valid the decrees of the President of the Reich, require the counter-signature of the Chancellor of the Reich or the appropriate Reich Minister, and thus the Minister of National Defense. "Responsibility is assumed with the counter-signature." Thereby, in National law it is absolutely clear that the responsibility rests with the Minister of National Defense, that is, with the Reich Cabinet and the President of the Reich. It is, of course, true that before 1928, and so before Raeder became the responsible chief of the naval command, a few measures were taken without the knowledge of the Reich Cabinet. In the presentation of

evidence, however, it has been clearly shown, especially by the statement of former Reich Minister Severing, that from the moment when Raeder became chief of the naval command, contrary to the statements of the Prosecution, no more secret measures were taken. Severing has confirmed that the Mueller—Stresemann—Severing Cabinet, in a Cabinet meeting of 18 October 1928, obtained a clear picture of the secret measures of the armed forces by interrogating Raeder as chief of the naval command and Heye as chief of the army command.

Both Raeder and Heye, after they had given an explanation, were obliged by the Cabinet, in conformity with the above-mentioned paragraphs of the Reich Constitution, to take no measures in the future without the knowledge of the Minister of National Defense, that is, the Cabinet. At the same time the parliamentary cabinet established that the secret measures taken before Raeder's time were only a question of trifles and expressly assumed the responsibility for them. If, however, the Cabinet, in conformity with the Constitution, assumed the responsibility, this is a legally and constitutionally effective proceeding which exonerates Raeder as Chief of the Naval Command and relieves him of responsibility. It seems, therefore, inadmissible that the defendant, who no longer bears the responsibility, should be made responsible for actions for which the Cabinet assumed the responsibility.

The attitude of the Cabinet in the Cabinet meeting of 18 October 1928, however, further shows that all these actions cannot have any criminal intention to wage a war of aggression as their basis. For even the Prosecution will not want to assert that men like Stresemann, Mueller, and Severing had the intention of waging wars of aggression, but will have to believe Severing that Stresemann, Mueller, and himself only assumed responsibility for these violations because these violations were only based on ideas of defense. One will also have to believe Severing that thoughts of defense were justified, because in the twenties the danger actually existed that Germany would be attacked, for instance by Poland, and then would no longer be in a position to defend herself with the small armed forces allowed by the Treaty of Versailles, a danger which had shown itself particularly impressive by Polish border attacks in East Prussia and Silesia as well as by the occupation of Vilna, and which increased, when all attempts by Stressemann and Mueller failed to realize the intention of the other powers to disarm as promised in the Treaty of Versailles.

Mr. Justice Jackson admitted in his opening speech how difficult Germany's position was and how justified her defense measures were. He said literally:

"It may be that in the twenties and thirties Germany stood before desperately difficult problems, problems which would have justified the boldest measures, only not war."

I even will not go as far as Mr. Justice Jackson, but I believe that the measures taken by the navy are certainly covered by his own trend of ideas about the "boldest measures."

The British Prosecutor, Mr. Elwyn Jones, attempted during the cross-examination of Severing to prove that Raeder did not observe the obligations of the cabinet meeting of 18 October 1928, because Severing, according to his testimony was not informed of the construction abroad of the small submarines for Turkey and for Finland. Against this, two things must be considered:

a. During his testimony, Severing did not remember details, but only the fundamental and decisive questions, and moreover, he naturally relied on the competent technical minister, thus the Reichswehr Minister, concerning details.

b. According to Severing's testimony it was an exceptional case on 18 October 1928, when the Chief of the Navy High Command appeared before the entire cabinet. Raeder as Chief of the Navy High Command was not obliged to inform all the members of the cabinet from time to time, but was, in accordance to the Constitution, merely obliged to inform the incumbent Reichswehr Minister. But Raeder did this. Whatever the Reichswehr Minister on his part submitted then to the other members of the Cabinet and the Reichstag, is not only beyond Raeder's knowledge but is also not his responsibility. The Reichswehr Minister and the Cabinet bear the responsibility for this.

In conclusion, I take the liberty to point out only the following:

If, despite all this, the Prosecution wants to consider the discussed violations of the Treaty of Versailles on the part of the navy as an intention of aggression, the then incumbent Social Democratic or Democratic Government bears the responsibility for this.

With this the indictment collapses relating to this period. For to hold the then incumbent governments to account for the intention to wage wars of aggression would mean to prosecute on his point "ad absurdum."

5. Also the treaty violations during the period from 1933 until the German-English Naval Agreement of 1935 show the same actual and judicial picture. Also during these approximately 2 years, no decisive expansion of naval armament took place. The only disputable accusation made by the Prosecution in this respect

is in document D–855, which was submitted during cross-examination. It concerns the report of Flottenintendant Thiele. According to this it was decided in March 1935, thus few months before the naval agreement, to make the plans for the "Scharnhorst" and the "Gneisenau" with 27,000 tons displacement, although at this moment limit of 10,000 tons displacement according to the Treaty of Versailles was still formally in force for 3 months, in contrast to the 35,000 tons displacement provided for in the naval agreement of 1935.

In this, I beg to take into consideration that already in March 1935 Germany could count on a speedy conclusion of a German-English agreement, while much more time passes from the planning stage until the completion of a battleship, which cannot be counted in months, but in years.

As a matter of fact, "Scharnhorst" and "Gneisenau" were not commissioned until 3 or 4 years after the Naval Pact, i.e. in 1938 or 1939 (*see Raeder Exhibit 2, affidavit Lohmann, under IV*).

The other matters enumerated by the Prosecution are again trifles; for instance, the selection (not the construction, as the Prosecution terms it) of 4 to 5 merchantmen (C–166), or the construction of 5 U-boats at 40 tons each, (C–141) which, for technical reasons, were constructed and 12 torpedo boats of 200 tons each. The Prosecution cannot in all seriousness severely blame this all the more so as the above-mentioned deviations from the Versailles Treaty were well known to foreign technical specialists or—as the witness Schulte-Moenting termed it succintly —they were an "open secret."

6. And now the most decisive juridical angle in judging all developments until the summer of 1935. Rights accorded by a treaty between states are of equal validity with those accorded by Commercial Law. Breaches of agreement are considered adjusted and settled with the signing of a new agreement. In the present case the "Anglo-Germany Naval Agreement of 18 June 1935"—Raeder Exhibit 11—stands for the new treaty. This Naval Agreement brings complete deviation from the Versailles Treaty with respect to the high-tonnage vessels as well as the U-boats. It is only on the basis of the ratio permitted Germany by this new agreement that the insignificance of the previous very small violations of the Versailles Treaty becomes apparent.

Ten thousand-ton cruisers were replaced by 35,000 ton warships, and the ban on the construction of U-boats was replaced by equality in U-boat tonnage. And, Germany's demands were not unreasonable; quite the contrary, His Majesty's Government of the United Kingdom, in the above mentioned document, explicitly confirmed the German proposal "as an exceedingly important contribution to future limitation of naval armaments."

This agreement between England and Germany makes the debate on the Versailles Treaty obsolete factually and juridicially, as far as the navy is concerned.

II

This Naval Agreement was generally welcomed on the part of England and Germany. The Naval Agreement was supplemented by a new agreement on 17 June 1937 (*see Raeder Exhibit 14*). As proof that the Navy has violated also the Naval Agreement, with aggressive intentions, the prosecution has raised two charges:

1. In the Agreement of 1937 both contracting Governments were bound to a mutual exchange of information: namely, annually, within the first four months of every calendar year, with reference to details of the building program. According to document C–23, the navy violated this obligation so far as it gave the displacement and the draught of both battleships "Bismarck" and "Tirpitz" which were being built at the beginning of 1938 as too low, namely 35,000 tons instead of 41,700 tons. The fact of this violation is openly admitted by Raeder. But here as well, it is not such a great violation as it is described by the Prosecution, namely there is no violation which shows any grounds for proof of criminal intention. This is shown in the exhaustive descriptions in my presentation of evidence and in the testimonies of witnesses which I do not need to repeat here. It will be sufficient if I refer to the absolutely convincing testimony of ship building director Dr. H. C. Suechting which I have submitted as Raeder Exhibit 15. The tonnage increases demanded by the navy during the construction were to be used exclusively within the concept of the defensive, namely the idea to increase the armor plating of the battleships and to arrange the bulkheads in such a way that the battleships should be as much as possible unsinkable; a concept of the defensive which, as Dr. Suechting emphasizes, has proved to be actually correct during the combatting and sinking of the battleship "Bismarck." But as it is a question of concept of the defensive, no aggressive intentions can be construed from this treaty violation.

In judicial connection, it must be added that a right was conceded under certain conditions in the Naval Agreement of 1937 in articles 24, 25, and 26 that the contracting governments may deviate from the contracted agreements and especially from the tonnage limitation of battleship, if any other sea power builds or acquires larger battleships. This case of article 25 occurred, and the violation of the agreement consists solely in the fact that the navy certainly had a right to build henceforth larger battleships but should have informed England that Germany wanted to make use of her right. It concerns only the violation of the obligation for exchange of information. How meaningless this measure was, is proved by the alteration of the German-English Naval agreement based on the London Protocol of 30 June 1938 which I have submitted in Document Raeder Exhibit 16.

Already on 31 March 1938, that is only 6 weeks after the date of the document C–23, England on her part reported according to the London Protocol of 30 June 1938, that she must make use of the mentioned right, by virtue of article 25 and proposed therefore that the battleship tonnage will be increased from 35,000 to 45,000. This agreement was then signed by both countries on 30 June 1938, and thus the violation of agreement became illusory, as is seen from the document C–23.

2. The British prosecutor has raised a second charge during cross-examination by submitting document D–854. It concerns the notes made by Admiral Assmann for his writing of history; on sheet 15 of which he writes that in the sphere of submarine building, Germany followed the terms of the German-English Naval Agreement the least; 55 submarines could be contemplated until 1938; but 118 were actually completed or contracted for. These statements by Assmann are actually incorrect. In reality, Germany followed strictly all the stipulations of the German-English Naval Agreement. Despite the assurance of equality of rights, Germany limited herself voluntarily in the Naval Agreement of 1935 to 45 percent; but she reserved for herself the right to increase this percentage at any time by friendly agreement with England. The presentation of evidence has shown (see the testimony of witness Raeder and Schulte-Moenting) that in.December 1938 the appropriate negotiations took place between the British Admiral Lord Cunningham and the Grand Admiral Raeder during which His Majesty's Government conceded the increase up to 100 percent. It was not clear in the presentation of evidence whether this concession was put in writing, as it is to be assumed. Meanwhile I could establish that a document must have existed, certainly from the mentioned Assmann Document D–854, where on page 169 (in connection with page 161) the letter in question of 18 January 1939 is mentioned. It is necessary to say only in conclusion that the figure of 55 submarines mentioned by Assmann corresponds to 45 percent, whereas the figure of 118 submarines

makes 100, accordingly Assmann and therefore the Prosecution as well are wrong; actually there is no violation at all of the naval agreement in respect to submarines.

III

I now come to the reproach made by the Prosecution that Admiral of the Fleet Raeder had taken part in a conspiracy for waging wars of aggression and in particular supported Hitler and National Socialism, despite his alleged knowledge that Hitler from the beginning had the intention of conducting wars of aggression.

1. How did Raeder come to Hitler and how could he, or rather how must he, at that time have reckoned with an intention of aggression on the part of Hitler?

As I already mentioned, it is proved that Raeder before 1933 had nothing to do with National-Socialism and knew neither Hitler nor the Party collaborators; he got to know Hitler on 2 February 1933 when he and the other commanders were introduced to Hitler by Baron von Hammerstein. As chief of the Naval Command Staff, there was for Raeder only one superior, i.e., the President of the Reich von Hindenburg, who, according to the constitution and the Wehrmacht Law was the commander-in-chief of the whole Wehrmacht. As President of the Reich Hindenburg had appointed Hitler as Chancellor of the Reich, and thus was of necessity created a connection between Hitler and the Wehrmacht. Any decision of Raeder therefore did not come into consideration. As a subordinate to Hindenburg he had to put up with the political decision Hindenburg had taken as President of the Reich. The constitutional basis in regard to the Wehrmacht was in no way altered by the fact that Hitler came into power. As Chief of the Naval Command Staff Raeder took no part in this political decision, any more than he had taken part previously when Mueller of the Social Democratic Party or Bruening of the Center Party became chancellors of the Reich.

There was moreover no cause for Raeder to resign his post on account of this internal political decision, for Hitler explained to Raeder and the other high officers at the first conference of 2 February 1933 and particularly also upon the occasion of the first naval report in the same month, that nothing would be changed in the Wehrmacht and that the Wehrmacht was to remain outside of politics as provided by the constitution and the Wehrmacht Law. As attested by the testimony of Raeder and Schulte-Moenting, Hitler at the delivery of the naval report explained his fundamental ideas in regard to a peaceful policy, for which, in spite of the friendly revision of the Versailles Treaty that he was striving for, it was necessary to come to a reasonable understanding with

England by virtue of treaty, in regard to the development of the navy in keeping with the general limitations of naval armament. During this conversation Hitler clearly gave to understand that he did not want to institute any naval armament race and that the development of the navy was to take place only by friendly agreement with England. This was a thought which absolutely corresponded to the fundamental viewpoint of Raeder and of the navy. It would have been absolutely out of question for Raeder on this given basis to go to his superior Hindenburg and declare that because of Hitler he could no longer hold the leadership of the navy.

Now the Prosecution assumes that the men then holding leadership in Germany already knew Hitler's true intentions from Hitler's book "Mein Kampf." The Prosecution cited as proof several quotations partly torn from the context from Hitler's 1924 propaganda book. This line of argument by the Prosecution does not seem right because Hitler wrote this book as a private individual, belonging to an opposition party. In this trial it has several times been pointed out that the statements of private foreign individuals are irrelevant, even when these foreigners are ever so well known and subsequently—as in Hitler's case—were given a position in their government. Raeder could be allowed to assume, as could anyone else, that as Reich Chancellor Hitler would not maintain all the party doctrines he defended years before purely as a member of the opposition, particularly not when the statements of Hitler on military matter contradicted these former party ideas. Moreover for the navy the relation to England was always decisive and in this very connection Hitler had even on page 154 of his book "Mein Kampf" declared verbatim:

"For such a policy of course there was only one possible partner: England."

Moreover it must be said in rebuttal of the quotations submitted by the Prosecution, that they are all taken from the 1933 edition and that, in spite of great pains the General Secretary's Office has been unable to procure an earlier edition, particularly the 1st edition of 1925 and 1927. It is a known fact that Hitler himself in later years made changes on many points in numerous places in his book; it follows that the quotations from the 1933 edition cannot without further ado be taken as a basis.

2. Would Raeder in the following years have had to realize that Hitler wanted to depart from the described fundamental idea of a policy of understanding with England, and is it possible to follow the line of argument of the Prosecution that Raeder should have refused his further collaboration at any given time before 1939?

I am of the opinion that this question must be answered in the negative, and that the necessity of negation results quite naturally from the combining of various facts which were submitted by the Prosecution or by the Defense during the demonstration of evidence:

a. Hindenburg died on 2 August 1934, and the Prosecution reproaches Raeder with having thereupon taken an oath and particularly that he in this oath put the Fuehrer in the place of the Fatherland. (Transcript of session of 15 January 1946.)

This case was sufficiently explained in the presentation of evidence. I must therefore only refer to the error made by the Prosecution in its assertion; the Prosecution itself produced document D–481 which indicates the official oath taken by the soldier of the Wehrmacht on Hitler's orders. This document is a law signed by Hitler, Frick, and Blomberg. According to this law it is ascertainable that it was not Raeder, who replaced the word Vaterland by Hitler, but that the latter himself had demanded that allegiance be pledged to him as Commander-in-Chief of the Wehrmacht by all soldiers. Before the issue of the decree concerning this oath, cleverly devised by Hitler and so portentous for the following years, Raeder had neither been informed of it nor had his advice been solicited as to the textual draft of this oath, he was simply summoned to the Reich Chancellery without being given a hint as to what it was all about.

The question, what kind of oath is taken by a soldier is again a political one, a question of legislation upon which Raeder in his capacity as soldier and Commander-in-Chief of the Navy had no influence.

b. The prosecution charges Raeder with having been informed of many political decisions and of having, as Commander-in-Chief of the Navy, drafted on these occasions strategic plans and preparations. It is a question of the cases of the withdrawal from the League of Nations on 14 October 1933, the occupation of the Rhineland on 7 March 1936, the Austrian Anschluss in March 1938, the incorporation of the Sudetenland in the fall of 1938 and the establishment of the Protectorate of Bohemia and Moravia in March 1939.

It refers principally to the following documents:

C–140—USA 51 of 25 October 1933
C–159—USA 54 of 2 March 1936
C–194—USA 55 of 6 March 1936
C–175—USA 69 of 24 June 1937
388–PS—USA 26 of 20 May 1938
C–136—USA 104 of 21 October 1938.

There is one fact which is common to all these decisions namely the one, that Raeder has not politically taken part in any of these decisions. Raeder had never before been asked for any advice, he as Commander-in-Chief of the Navy had no authority to collaborate in such decisions. Raeder's sole activity consisted in receiving these documents and messages, and in the subsequent issue of military orders, which he was supposed to draw up in anticipation of the event, should belligerent complications arise. It is wholly incomprehensible how a Commander-in-Chief of a branch of the Wehrmacht can be reproached for having made strategic preparations for possibly forthcoming belligerent complications. I believe, that it is the same all over the world, an Admiral never takes part in political decisions while being obliged to make certain precautionary preparations according to these political decisions of the Government. This again is a case of the discrepancy I have mentioned before with regard to the position of a military commander, which though considered by the Prosecution to be a political one, is a purely military position in reality.

There should not be any doubt that on the very same dates the foreign military commands involved in political decisions or interested in them were likewise making military plans.

No military commander would ever judge whether these political decisions of Hitler were crimes or merely offenses against international law, and particularly not if he was never summoned to the discussions. Neither the withdrawal from the League of Nations resulting from the failure of trying to have all countries disarm—according to the Versailles Treaty—nor the occupation of the Sudetenland, nor the establishment of the Protectorates of Bohemia and Moravia could be regarded by the Prosecution as criminal activities committed by the uninterested Commander-in-Chief of the Navy. There certainly were deviations from the Versailles Treaty, but even the British Chief Prosecutor, Sir Hartley Shawcross, himself declared on 4 December 1945 that "many objections against Versailles were possibly justified."

Even Justice Jackson has, as quoted above, explained that the boldest measures would have been justified for the purpose of a revision of this treaty, but not a war.

All these above mentioned measures of Germany were in fact accomplished without a war, thus they must be considered as being those Justice Jackson had declared justified, the more so as all these measures were quietly tolerated by foreign nations, even, as in the case of the incorporation of the Sudetenland, ratified by the Munich Agreement of September 1938, or by an agreement with the Government of the country in question, such as in the case of Austria. Should, in the case of Austria and the establishment of the Protectorate of Bohemia and Moravia, the Prosecution rightfully considers from an impartial and retrospective point of view that Hitler had used most doubtful and possibly criminal measures for this achievement. That would be of no importance for the Commander-in-Chief of the Navy, because of the established fact that he had not been informed about these activities, and still less regarding the measures to be taken.

It has been established, in particular, that Raeder was neither informed of the details concerning the Austrian Anschluss nor of the kind of conference which ultimately led to an agreement with President Hacha. He never knew of the discussions with Hacha, nor of the menace of a bombardment of Prague—expressed in the course of this discussion—in which case I might refer to the depositions of the witnesses Raeder and Schulte-Moenting. All these measures were therefore in the eyes of Raeder activities admitted by international law or agreements which could not lead him to interfere in any way or to make any inquiries of Hitler, quite apart from the fact that he as military commander would have had no right whatsoever to do so.

Moreover, exclusively land operations would have been involved from the military standpoint even if complications had arisen, which is evident immediately from the location of the countries concerned. It would have been impossible if the almost completely uninterested Commander-in-Chief of the Navy had paid attention to these things, although hardly any naval preparations were under consideration. One should keep in mind the case of Czechoslovakia in which connection document 388–PS has a provision that the navy is to participate in possible army operations by commitment of the Danube flotilla which for that purpose comes under the orders of the High Command of the army, a flotilla consisting of very small ships, that is of a few gunboats, if I remember correctly.

c. I further quote for the argument in this connection the words of Sir Hartley Shawcross of 4 December 1945 concerning the German-Polish non-aggression pact of 1934:

"Hitler, by concluding this treaty, convinced many people that his intentions were really peaceful." (German transcript.)

Consequently Raeder had to be convinced.

d. It is true that Raeder belonged to the secret cabinet council created in February 1938. The fact proved in the meantime that the secret cabinet council was purely a farce is equally correct. It is therefore unnecessary to deal with this point which was in the beginning considered so important by the Prosecution.

e. The claim of the Prosecution that Raeder had been a member of the government and Reichsminister has been refuted in the same manner. This claim of the Prosecution has been incomprehensible from the start. Document 2098–PS presented by the Prosecution only states in an absolutely unequivocal manner, that v. Brauchitsch the Commander-in-Chief of the Army and Raeder the Commander-in-Chief of the Navy held a "rank equivalent to that of a Reich Minister". This proves, that he was no Minister but for reasons of etiquette held a rank equal to that of Reich Minister. This makes it evident that Raeder was not assigned any political task through this decree of Hitler, as the Prosecution would like to have it. There is the fact to be added that through this decree he did not even receive the right to participate in cabinet sessions if he wished to do so, but, as stated by Hitler in the above-mentioned document only, "upon my order." This therefore means nothing more than that Raeder could have been called upon to participate in a cabinet session if technical naval problems were involved. In reality this politically unmaterial, hypothetical case never did occur.

f. The participation in the Reich defense council on the basis of document 2194–PS (Reich Defense Law of 4 September 1938) can also not be considered incriminating. On the one hand it deals, as becomes evident from the text, only with "measures for the preparation of Reich defense," therefore not with political activity nor with activity connected in any political sense with aggressive war.

Moreover, Raeder, contrary to the claim of the Prosecution, according to Document 2018–PS, a later issued Fuehrer decree of 13 August 1939, did not at all belong to the created Ministerial Council for Reich Defense that time, and this simply for the reason that he was not a Minister. On the other hand other countries, too, have the institution of Reich Defense Council or Reich Defense Committee. I want to remind you of the well-known fact that there existed in the British Government already a long time before the first World-War a Reich Defense Committee, which was of much greater importance than the equivalent institution in Germany.

g. As the last item in this connection, I want to point out that the claim of the Prosecution that Raeder had been a party member has also proved untenable. It is true that Raeder received the golden insignia of honor (Goldene Ehrenzeichen) from Hitler; this was nothing else, however, than the award of medal and it couldn't be anything else, because a soldier could not be a member of the Party. This becomes evident beyond doubt from paragraph

36 of the Wehrmacht Law, according to which soldiers can never engage in politics and which forbids them to be a member of a political organization.

Besides, I want to refer to the presentation of evidence which proved sufficiently that Raeder never had connections with the party, that he rather had differences of opinion with party circles and that he was spurned by typical National-Socialists because of his political and religious attitude; for instance he had on Goebbels the same effect as a red rag on a bull, and this was no wonder either, for on the one hand he prevented the Party again and again from obtaining any influence on the officer corps of the navy, and on the other hand assisted the Church to the greatest extent contrary to the principles of the Party and saw to it that the spirit of the navy received a Christian basis. I may refer in this connecteion to the typical National-Socialist phrase of Bormann:

"National Socialistic and Christian concepts are incompatible." In the same document Bormann, as he so often did, expressed himself so strongly in a train of thought contradictory to culture against Christianity, so violently propagandized for the destruction of all Christian ideas, that this attitude toward the party sufficiently proves that Raeder as a convinced Christian never could have affiliated himself with the Party.

h. I have already stated that Hitler in 1933 said that it would be one of the fundamentals of his policy to make Germany by peaceful means a sound and strong nation; and that it was absolutely necessary for peaceful development to acknowledge British hegemony and to come to an agreement with England about the size of the German fleet and if possible even to come to an alliance. These ideas agreed with the fundamental attitude of Raeder who stated it in detail during his hearing. Within the limits of my defense, it may be an open question, if and when Hitler abandoned that basic thought. For in any case Hitler has always emphasized this basic thought to Raeder and also supported it by deeds; this ever recurring thought runs like a red thread all through the years to the outbreak of war. The realization of this thought led to the conclusion of the German-British naval agreement in 1935, the conclusion of the German-British naval agreement of 1937, the agreement about submarines with Lord Cunningham in 1938, and to the London protocol of 30 June 1939 concerning the battleships; this throughout the years of the reconstruction of the German navy runs always the same idea, namely ever the idea of agreeing with England of acknowledging England's supremacy and of avoiding any difference which might lead to a break with England.

Subsequently, in the full knowledge of all the documents and all the facts proved during this trial, it may be established that Hitler at some time probably in 1938 may have become unfaithful to his own thought and that thereby he has become guilty of the tragic fate of Germany. In order to judge the accusations made against Raeder the decisive thing is not that which must be acknowledged as being objectively true after having a knowledge of all facts but the only decisive thing is whether Raeder has realized or could ever possibly know of this deviation by Hitler from his own ideas. This however is not the case. Raeder could not guess, and even less know that Hitler had at any given time become so unfaithful to his own political ideas which he had repeatedly stressed and demonstrated and thus had become guilty of instigating the frightful danger of World War II. Raeder could not suspect or know that also in the last period before the war Hitler spoke to him differently from what he thought, and also spoke differently from the way he acted. In the matter of the navy in particular the relatively slow rebuilding of the German fleet showed that Hitler intended to remain faithful to the train of thought I referred to. A change of mind on Hitler's part in this connection was not perceptible; for a change of mind would have had precisely the result that he would have developed the navy to a larger extent than he did. He would then have had at least fully to exploit the possibility of the German-British Naval Agreement as to the size of the respective fleets. According to the naval agreement the German fleet was allowed a total tonnage of 420,595 tons. As a matter of fact this maximum was never reached. Even in regard to battleships Germany remained short of the naval agreement with the result that the battleships "Bismarck" and "Tirpitz" were not available in the first year of the war and therefore could take no part in the occupation of Norway; the "Bismarck" was completed only in August 1940, and the "Tirpitz" in 1941.

According to the naval agreement, Germany was allowed to have the same tonnage of submarines as England. Actually however, U-boat construction was so little speeded up that at the beginning of the war in 1939 as the hearings proved Germany had available only the minimum figure of 26 submarines suitable for Atlantic service. And further, as late as end of May 1939 according to document L–79, the so-called "Little Schmundt" was instructed verbatim that "nothing is changed in the shipbuilding program."

All these must have awakened the strong belief in the Commander-in-Chief of the Navy from his point of view and from his field of action that Hitler would stand by his oft stressed basic line, not to allow war to come to pass.

This strong belief of Raeder—and this seems important—was to the utmost extent strengthened by the attitude of foreign countries:

Winston Churchill wrote in 1935 in his book "Great contemporaries":

"It is not possible to pass just judgment on a personality in public life who has reached the enormous proportions of Adolf Hitler before his life's work stands revealed before us as a whole * * *. We cannot say whether Hitler will be the man who once again will unleash a world war in which civilization will go down irrevocably, or whether he will enter history as the man who has restored the honor and the peaceful intent of the great German nation and has brought it back cheerful, helpful, and strong to the front rank of the European family of nations."

One year later, at the Olympic Games in Berlin in the year 1936, the representatives of the foreign countries appeared in a body and greeted Hitler in a manner which, in its approval and partial enthusiasm, was incomprehensible to many Germans who were sceptically inclined. Subsequently the greatest foreign politicians and also members of various Governments have visited Hitler and reached a complete understanding with him, and finally in the autumn of 1938 an understanding was again reached under Chamberlain and Halifax which strengthened Hitler immeasurably, and by means of which Hitler tried to prove to the Germans how correct all his actions had been as they were being recognized by foreign countries. The proclamation defining their aims, which was issued by Hitler and Chamberlain in Munich on 30 September 1938, cannot be estimated high enough. I would therefore like to cite the two first decisive phrases from Raeder Exhibit 23, Document Book II, Pages 127 and 128:

"To-day we had a further discussion, and agree in the realization that the question of German-English relations is of primary importance for both countries and for Europe. We regard the agreement which was signed last night and the German-English Navy Treaty as symbolic of the wish of our two nations never again to conduct war against each other."

I believe that these references are sufficient and ask: Can it be demanded that a German Grand-Admiral, who has never been a politician and always only a soldier, should have looked farther ahead in judging Hitler than the great British statesmen Chamberlain and Churchill? I believe that the form of the question already harbors the negative form of the answer.

3. The Prosecution can only seriously confront these numerous points of view with some few documents which might speak for Raeder's knowledge of Hitler's aggressive plans. The Prosecution has presented indeed innumerable documents in which it pointed out that Raeder or the Naval Operations Staff or the Supreme Command of the navy received a copy. However, in a very considerable number of documents the Prosecution could not state anything beyond the fact that Raeder received a copy, while a realistic connection on the subject did not exist for the most part and was not presented by the Prosecution, either. It is naturally not surprising that military documents for the sake of uniformity went to all branches of the Wehrmacht, even if in individual cases one branch of the Wehrmacht was not at all or hardly concerned with them. Of all these documents in the case of Raeder, only the 4 documents which the Prosecution described as key documents because of their importance can be really incriminating. These are the four speeches of Hitler of 5 November 1937, 23 May 1939, 22 August 1939, and 23 November 1939 to the Commanders-in-Chief. (*386-PS—USA 25; L-79—USA 27; 798-PS—USA 29; 1014-PS—USA 30; 789-PS—USA 23.*)

The Prosecution claims that these speeches show participation in the conspiracy, and that it could be clearly recognized from these speeches that Hitler wanted to wage wars of aggression. I would therefore like to state my opinion in detail as to these documents, and in so doing show why these documents cannot influence the picture which I have given as a whole.

Doubtlessly these key-documents are of the utmost importance for subsequent historical findings as to what trains of thought have directed Hitler; and for the reason that they are expressions of opinion by Hitler, and in spite of the large extent of the captured documentary material there exist almost no written drafts by Hitler. First of all the thought is also attractive that the contents must be true, because they deal with expressions of opinion which were only expressed before a small circle, before which Hitler, in accordance with his nature, preferred to express himself openly rather than in his public speeches. Even though I do not fail to recognize the value of the documents in any way, I still believe that the Prosecution overestimates by far the importance of these 4 documents. They certainly are key-documents to a certain extent, and that in as far as they provide the key to the recognition of Hitler psychologically and to the understanding of Hitler's methods. The documents, however, are not a key to the real intentions of Hitler, and particularly not a standard for the final conclusions which the listener would have had to draw from these documents according to the opinion of the Prosecution. In order to comprehend completely the value of the documents in this connection, I would like to group in advance several general points which apply equally to each of these 4 documents. All these points limit the evidential value of these documents which was overestimated by the Prosecution:

Point a. None of these speeches were recorded in shorthand, and therefore we do not have the actual text of any speech. In accordance with this, Hossbach in the record of 5 November 1937 correctly chose the indirect address, just like General Admiral Boehm in his record of the speech of 22 August 1939 (*Raeder Exhibit 27, Document Book II, Page 144 ff*). Surprisingly and not quite correctly, Schmundt chose the direct address in the record regarding 23 May 1939, although it is not a literal record; however, he was at least careful and stated in the beginning that Hitler's statements were being reproduced "according to the sense." The weakest documents, to wit, the two versions of the speech of 22 August 1939, submitted by the Prosecution, 1014–PS and 798–PS, have chosen the direct address, and the authors of this document whose names are unknown have not even considered it necessary to give an indication as was done by Schmundt. However this may be, in considering the documents it must be kept in mind that they were not reproduced word by word, and that therefore the reliability of the reproduction depends on the manner of work and attitude of the originator of the document, especially on the fact of if and how many notes the individual made during the speech, and when he made his record. In connection with this it appears important that the Adjutant Hossbach, as is shown by document 386–PS, only made the record a full 5 days later, to wit, only on 10 November, while the speech had already been made on 5 November. In the case of Schmundt, a date for the record is missing altogether, and likewise in the two Prosecution documents regarding the speech of 22 August 1939. The latter also lacks the signature so that in this case it cannot even be ascertained who bears the responsibility for the record at all. The same applies to the document regarding the speech of 23 November 1939—so many formal mistakes and just as many doubts concerning the value as evidence and reliability of the documents.

Things are different with the document of Boehm who in his affidavit, Raeder 129, certifies, in lieu of oath, that he wrote down Hitler's speech simultaneously, and of particularly important parts jotted down the exact text, and who furthermore certifies that on the same evening he wrote down the final draft which has been submitted here. If in all these documents the true text does not exist, then it is plain how important it is if it can at least be established that the record was made simultaneously with the speech or at least on the very same day, and not, as in the case of Hossbach, 5 days later. With the best of memories even the best Adjutant, who daily has to handle quite many new things, can not possibly make an absolutely reliable reproduction of a speech after 5 days.

Point b. Just as important is the second point, to wit, the fact that contrary to other military documents these are not official documents with a distribution list, therefore not documents which were subsequently received by those concerned. That the documents were not received by Raeder was established in the evidence by him and the witness Schulte-Moenting, apart from the fact that it is already shown by the lack of a distribution list on the document. This point particularly, appears of great importance to me. Listening to a speech once—and Hitler as is well-known spoke extraordinarily quickly—does not move the listener to final conclusions in the same way as the presentation of a record by which he can always make certain subsequently about the contents of the speech. We who have come to know these speeches in the proceedings by way of writing and have again and again judged them by the wording, naturally consider the individual words and application of phrases more important than we would have done with a quickly-delivered address. In addition to this comes the fact that all of us easily tend to lend more importance to the individual application of phrases, because all of us now can overlook everything better from the present standpoint and out of more extensive knowledge; because we do not only have one speech to base our opinions on, but also all speeches and in addition all the many other documents which show the historical development. In discussing these documents it must again and again be kept in mind how different the individual listener will react to the spoken word, and how frequently, after a few hours even, the reports of various listeners will differ from one another.

Point c. The Prosecution sees in these speeches of Hitler the basis of the conspiracy, and presents it in such a manner, as if Hitler had on this occasion consulted with the Commanders, and had then concluded a certain plan of conspiracy with them, and had finally reached a certain decision. The Prosecution must maintain this because in this lies the basis of a conspiracy which can only then be spoken of if something is being planned in common. In reality, contrary to what the Prosecution states, no influential group of Nazis assembled in order to examine the situation and to make decisions, but it was rather a one-sided presentation by Hitler in which no discussion and no consultation took place. No decision was reached, either, but Hitler rather spoke quite generally about possibilities of developments (*see Hossbach document*), if one could speak of resolutions at all, it was merely a matter of the sole decision of Hitler. All this stands in contrast to a real conspiracy. I furthermore have the impression that the Prosecution in the conception of a conspiracy to wage wars of aggression has formed for itself a completely false picture of the real power conditions in the National-Socialist State.

In my opinion it fails to recognize the characteristics of a dictatorship, and it actually may be very difficult to understand the immeasurable dictatorial power of Hitler if one has not personally constantly lived through the whole 12 years in Germany, and in particular in its development from the first beginnings until it finally became a dictatorship which worked with the most terrible, the most horrible, and the most undignified human terror. A dictator like Hitler, who furthermore apparently exercised an immense suggestive and fascinating force, is not the President of a parliamentary government. I have the impression that the Prosecution in judging the situation as a whole has never completely freed itself from the ideas of a parliamentary government, and it has never taken the uncompromising work of a dictator into account.

The extent to which the idea of a conspiracy between him and the members of the Cabinet or between him and the Commanders is averse to Hitler's mind became evident in the course of this trial through numerous examinations of witnesses. Particularly striking in that respect was the testimony of the Swedish industrialist Dahlerus, who by reason of his contacts with England and with Germany—in each case equally excellent and extensive—was in course of time enabled to obtain an objective picture of England as well as Germany, and who during his negotiations with Chamberlain and Halifax on one hand, and Hitler and Goering on the other hand, was best prepared to recognize the difference between the Parliamentary British Government and the German Hitler Dictatorship. The accounts of Dahlerus prove convincingly that the difference was such that no bridging-over was possible. After having spoken with Chamberlain and Halifax a discussion with the Cabinet took place, naturally, before a final decision was taken. On the other hand, in the night of 26 to 27 August 1939 when Dahlerus had a discussion of the utmost importance with Hitler in which only Goering was present, Hitler at once made 6 propositions, without saying a word to any of the Cabinet members or any of the military commanders, without even advising with

Goering who sat there silently; proposals, by the way, which in no manner were in line with what he had said to Sir Neville Henderson. A stronger argument against a conspiracy with Commanders or members of Cabinet there hardly exists, unless reference be made to the equally important fact which the witness Dahlerus added, namely that during the entire 2½ hours Goering did not once dare to open his mouth, and that it was humiliation to see the degree of servility which Hitler demanded of Goering, his closest associate.

Point d. All of these Hitler speeches are full of contradictions. Such contradictions naturally impair clarity of thought and they rob the individual thought of its importance. Reading documents in their entirety, the number of contradictions becomes evident, a fact on which a remark by Admiral Schuelte-Moenting during examination and cross-examination was much to the point. It is just because of such contradictions and inconsistent thoughts that the evidential value of documents is diminished. It is quite natural that for a military adjutant such as Hossbach or Schmundt, it is difficult to record an unclear and contradictory train of thought; it is equally easy to understand that a military adjutant will be inclined to introduce as clear a line of thought as possible, and because of such endeavor he may happen to stress thoughts which have become clear to him more strongly than they actually presented themselves in the orally pronounced word. To this should be added the very appropriate remark of Raeder, who not only points to contradictions, but to Hitler's extraordinary sense of imagination, and who in that respect termed him "Master of bluff."

Moreover, in every speech of that type Hitler followed a very definite tendency. He had a definite purpose in view, namely, to bring about a desired impression on all or some of his hearers, either through intended exaggeration or by making things appear deliberately harmless, depending upon the purpose he pursued. While he spoke, Hitler followed the intuition of the moment. As Schulte-Moenting termed it, he freed himself of his concept. He thought out loud and wanted to carry his hearers with him, but he did not wish to be taken at his word. (Transcript of Court Session of 22 May 1946, afternoon.) One must agree with me that with such practices and such purposefully designed speeches there is at this time nothing really reliable to go by in order to discover Hitler's true opinion. In addition to that there is the following point of view for all these documents in general:

Item e. Following his address of 23 May 1939 "Little Schmundt", Raeder had an interview with Hitler alone in which he called Hitler's attention to contradictions in that address and, on the other hand, to contradictions deriving from the words—a remark previously made to him by Hitler—that under all circumstances he would also settle the case of Poland peacefully. Hitler then calmed Raeder down and told him that he, Hitler, had a firm hold of matters, politically. This was stated by the witness Schulte-Moenting who added that Hitler allayed Raeder's fears by an example of the contradiction between the speeches of 23 May 1939 and his other statements. He told him, that for him (Hitler) there were three ways of keeping things secret:

Firstly, the conversation with someone without other witness; secondly, the thoughts which he, Hitler, kept to himself and, thirdly, thoughts which he himself did not even think through to the end. I believe this manner of thought illustrates most strikingly how little reliance could ultimately be placed in statements made by Hitler before a small or large group of people. It seems to me quite natural then that in his deliberations Raeder kept neither to Hitler's general speeches nor to the address to the Commander which was discussed here, but that he went solely by what Hitler had told him when alone with him. In that respect, however, testimonies by Schulte-Moenting, Boehm, and Albrecht are in agreement in that they prove that as late as the year 1939, Hitler still gave Raeder repeatedly the explicit assurance that there would be no war; that is, he did this on occasions when for some reason or other Raeder was particularly worried and wanted to call Hitler's attention to dangers ahead.

In conclusion, I therefore believe it may be said that the so-called key documents are extremely interesting for a psychological opinion on Hitler; their evidential value as regards Hitler's real intentions, however, is very circumscribed and weak. No one can expect Raeder to accept for his guidance, speeches made by Hitler before his Commanders on the spur of the moment, but he based himself on assurances given him by Hitler, with no one else present, and on the fact that until the summer of 1939, until the outbreak of the war, these assurances were in perfect accord with facts and Hitler's actions, namely with the four Naval Agreements and the Munich Pact. There is some justification for Raeder not permitting himself to have this his basic attitude shattered by the speeches to the Commanders-in-Chief, though undoubtedly of a suspicious nature, but that he held steadfastly to his belief that Hitler would not deceive him. From the fact that we subsequently come to find that after all Hitler deceived Raeder in his private conversations, as well as by his special method of 2d and 3d classification of secrecy as described above, no guilt is attached to

Raeder, but solely to Hitler. Considering the voluminous amount of evidential matter, there is no justification in it for evidence proving that even in 1938–1939 Raeder planned for a war of aggression, in violation of international law: it reveals only the intention of the part of Hitler to engage in a war of aggression in violation of international law.

Having dealt with the key documents in a general manner, I am now asking the Tribunal's permission to add a few points to each individual document, since the Prosecution over and over again stressed such documents as basis for their charge of conspiracy.

a. Hossbach document, 386–PS, discussion of 5 November 1937 in the Reich Chancellery:

The critical phrases of this document cannot be refuted, and they were cited often enough by the Prosecution. In discussing that document it should at the same time be taken into consideration that Goering and Raeder unanimously stated that Hitler announced in advance that he wished to express a certain trend by his speech. Hitler was dissatisfied with measures taken by Field Marshal von Blomberg, and especially those of Generaloberst v. Fritsch, the Commander-in-Chief of the Army, and he felt that rearmament made but slow progress in the army. As a result, Hitler made a point of exaggerating, a fact known only to Goering and to Raeder, so that it is but natural that the impression of that speech on Neurath who had no idea about this intention was entirely different and deeply alarming. It is interesting to note that Hitler did not fully get what he wanted, because the two last paragraphs of the document indicate that to some extent Blomberg and Fritsch saw through Hitler's scheming, and that his exaggerations failed to deceive them. Though on similar occasions Hitler did not permit discussions, Blomberg and Fritsch intervened on this occasion and pointed to the need of preventing England and France from lining up as Germany's adversaries. Blomberg explained the reasons for his protest, and in the penultimate paragraph the document unmistakably expressed his scepticism as to Hitler's words in that he remarked that under such circumstances he would not be able to carry out his planned vacation abroad scheduled to begin 10 November.

It is equally interesting to note that thereupon Hitler came round and, in contrast to his early statements, declared himself convinced of England's non-participation, and that, consequently, he also does not believe in military action by France against Germany. The lack of tenability of Hitler's ideas shown in this document finds further expression in that he took as starting point for his statements an idea truly fantastic, namely, an Italo-French-

English war or—equally fantastic—a civil war in France. Continuing such contradictions, Hitler mentioned in his speech the application of force on one hand, an attack by Poland against East Prussia on the other hand—something which bore out a defensive idea only;—and in regard to Czechoslovakia he said that in all probability England and France had already written Czechoslovakia off their books without further ado.

This hint is an indication, however, that Hitler was prepared to negotiate, and this is in keeping with actual historic developments: he mentions that Austria and Czechoslovakia will be brought to their knees but, nevertheless, one year later, in March as well as September 1938, he carried on negotiations and settled both questions without war. This fact in particular seems very significant, in that it proved to Raeder by the events which followed that he was right in not ascribing undue importance to Hitler's rash words of 5 November 1937, because they were not supported by the fact that in reality Hitler, at a later date, carried on negotiations.

Raeder was also right when, during his interrogation, he pointed to the 2d Naval Pact that had been concluded with England just a few months earlier, and that as a result he could not really expect Hitler seriously to leave a path on which he was engaged.

And as a last point of view: Throughout its entire length, the document is dealing with political questions on one hand and with possible land operations on the other. Raeder had nothing whatever to do with political questions because he was no politician, while Neurath as Foreign Minister naturally had reason to place greater importance on Hitler's political attitude. It is of equal importance that Neurath testified that, as a result of that speech, he too asked Hitler in a confidential interview for his personal attitude, and that he refused to continue in the Foreign Office because Hitler stated that those are his actual intentions. To me it seems typical of Hitler to declare to one person, namely Neurath, that perhaps he would go to war, while he told another person, namely Raeder, that he would under no circumstances make war. This difference in expressing his position obviously can be explained by the fact that at that time he no longer appreciated Neurath as Foreign Minister, because he realized that in the foreign policy which he proposed to follow, Neurath would no longer be as yielding as the successor he had in view, Ribbentrop. On the other hand, at that time he still wanted in any case to keep Raeder as Commander-in-Chief of the Navy. This is another instance of Hitler's method of acting as the situation demanded, always and without any compunction paying homage to the principle: The end justifies the means.

b. HITLER'S speech of 23 May 1939 ("Little Schmundt"), L–79, USA 27:

Here HITLER expresses himself once more in a most dubious fashion. He speaks of a program of aggression, of the preparation of a planned attack, and of the decision to attack Poland. I in no way fail to recognize that there is good reason for the Prosecution to consider this document as particularly good evidence. I believe, however, that in the case of Raeder, and taking into account the numerous points of view I pointed out, the value of this document as evidence is very much less than the Prosecution is inclined to think, and much less than warranted by the impression first gained from the wording of the Schmundt version. Schmundt obviously made an endeavor to formulate Hitler's contradictory, fantastic, and highly chaotic statements along the lines of his exact military thinking. This gives the document a clarity which is not that of Hitler. We do not know when Schmundt prepared the document, and Schmundt failed to show the copy he had made to other interested parties. During his examination and cross-examination the witness Admiral Schulte-Moenting pointed to the contradictions of this document in particular which I need not repeat here. Of greater importance is the decisive point, the contradiction between these words and the words which Hitler at the same time spoke to Raeder, and which always pursue the same old path, namely that he does not intend war and that he would not make excessive demands. Raeder was horrified at that speech, and he did not calm himself until after he had a private conversation with Hitler directly after that speech. As Hitler assured him in that personal interview that under all circumstances he would settle also the case of Poland in peaceful manner, he believed him, and he had every right to conclude Hitler was telling him the truth in answer to a question equally precise. I refer to the very precise statement on that document during the Raeder examination and the examination of the witness Schulte-Moenting. I especially refer to the comparison Hitler used (according to Schulte-Moenting's testimony) stating that nobody would go to Court if he had received 99 Pfennigs while the dispute involved one Mark, and concluded from it that he had received what he had asked politically, and that there could not be war because of the last political question, namely, the Polish Corridor.

All the statments made by witnesses whom I called, and among them the deposition by Doenitz is not the least in importance, to the effect that, incidental to the last U-boat maneuvers in the Baltic Sea in July 1939, Raeder expressed his firm conviction that in that respect he relied on Hitler's assurances. Raeder, furthermore, knew that the navy was absolutely unfit for a war at sea against England; he had explained that to Hitler time and time again: he trusted Hitler's words and was confident that also in the Polish question Hitler would resort to negotiations again and —as shown by the testimony of the witness Dahlerus—negotiations were in fact taking place, even successful negotiations in the beginning. The reason why the attempt finally failed after all and that it had to come to a second World War was stated in detail by the witness Dahlerus, who thus portrayed the awful tragedy of this event.

It seems important to me that up to August 1939 not only the witness Dahlerus but also Chamberlain still believed in Hitler's good intentions.

Therefore, here too we have the same question again and the same answer: One cannot expect Raeder as a soldier to have been more farseeing and to have recognized Hitler's dangerous ideas, if men like Chamberlain, Halifax, and Dahlerus themselves had not yet seen through Hitler at that time.

If I myself have referred to the seriousness and the incriminating character of this document, may I ask you to take into consideration that the incriminating character, just as in the document of 5 November 1937, concerns itself with political matters. As defense counsel for the Commander-in-Chief of the Navy, I have to judge the facts, not from the political but from the military aspect. From a military viewpoint, however, it is impossible to follow the arguments of the Prosecution under any circumstances, for the military are not authorized to take part in decisions of war or peace, but are merely obliged to make such military preparations as the political leaders consider necessary. In no country of the world does an Admiral have to give an opinion as to whether the possible war for which he must make plans is a war of aggression or a defensive war. In no country of the world does the decision of the question as to whether war is to be waged rest with the military, but on the contrary is always left to the political leaders, that is, to the legislative bodies.

Accordingly, article 45 of the German constitution stipulates that the President of the Reich is to represent the Reich in questions of international law and stipulates further:

"The declaration of war and the conclusion of peace take place by national law."

Therefore, the question whether a war has to be waged against Poland rested with the Reichstag and not with the military leaders. Professor Jahrreiss has already explained that in the legal development of the National-Socialist state these decisions rested in the last analysis exclusively with Hitler. From the viewpoint of my Raeder case it is of no consequence whether Hitler would be regarded as legally authorized to start a war himself, as he actually did in the fall of 1939. The deciding factor is only that in any case the military leaders from either a practical or a constitutional point of view do not have to participate in this decision. It is an untenable thought if the Prosecution tries to regard as a crime every act of military planning which has taken place on the part of Germany; for the military leaders, who merely receive the order to work out a specified plan, are neither authorized nor obligated to decide whether the execution of their plan will later on involve an aggressive or a defensive war. It is well known that the Allied military leaders rightly hold the same viewpoint. No admiral or general of the Allied armed forces would understand it if someone should bring a charge against him because of military plans that were made on the Allied side a long time before the war. I do not have to explain this any further. I believe it will suffice if I refer, for instance, to the Ribbentrop document exhibit 221. This is a question of a secret document, which, according to the title concerns "Second Phase of the Anglo-French General Staff Conferences." From this document it appears that exact plans were worked out on the part of the Allied forces for a war embracing many countries; plans which, according to this document include a war in Europe and a war in the Far East. There it expressly says that the French and British High Commands in the Far East "worked out a joint plan of operations." There it expressly speaks about the importance of the possession of the Belgian and Dutch national territories as a starting point for the beginning of the offensive against Germany, and the decisive point for this in this parallel military case seems to me to be the fact that this document is dated from the same month as Hitler's speech to the Commanders-in-Chief, which has already been discussed, namely, May 1939. The document bears the inscription: "London, May 5th 1939."

c. Address of Hitler to the Commanders-in-Chief on 22 August 1939 at the Obersalzberg (*798–PS—USA 29; 1014–PS—USA 30; Exhibit Raeder 77*).

Regarding the value as evidence of both the documents 1014–PS and 798–PS submitted by the Prosecution, for the sake of brevity, I should like first of all to refer to my previous statements which I made to this Court when I made the formal proposal to cancel Document 1014–PS. Although this high Tribunal did not accept this proposal I still believe that my statements on the limited value of this document as evidence are important, so far that only a very small value as evidence can be attached to both these documents and particularly to Document 1014–PS. The American Prosecution, when submitting these documents, duly pointed out, (Transcript, 26 November 1945) that the Court should take into consideration, should the Defense be able to submit a more accurate version of this speech. In accordance therewith, I submitted the Raeder Exhibit 77, a version coming from the witness Generaladmiral Boehm, and believe to have shown within the framework of the evidence that it is here a question of a more accurate version than the versions of the Prosecution documents. Thereupon, Sir David Maxwell-Fyfe handed in two documents under GB 464 and GB 465 in which he compares in the most scrupulous way Boehm's version with the versions 1014–PS and 798–PS by which he considerably facilitated the comparison of these documents. In order on my part to facilitate also this comparison for the high Tribunal and for the Prosecution, I requested Generaladmiral Boehm in the meantime to compare the versions under consideration himself also and that by using the compilations of the British Prosecution mentioned just now. The result is to be found in Boehm's Affidavit which I submitted as Raeder Exhibit 129.

When surveying all this material, it results that Document 1014–PS is extremely incomplete and inaccurate, all the more so as, apart from its formal deficiencies, it is only 1½ pages long, and for this reason cannot be an adequate reproduction of a 2½ hours' speech.

Document 798–PS no doubt is better, but also reveals numerous inaccuracies as shown by Boehm's Affidavit. It is not a question of every passage. The point, however, is that precisely some of the most important passages from which the Commanders-in-Chief might more likely be charged have actually not been spoken according to Boehm's sworn statement. According to Boehm's Affidavit it is not true that Hitler declared that he had decided as early as Spring 1939 to attack the West first of all, and only afterward to attack the East. Nor have the words been used: "I only fear that at the last moment a filthy fellow will submit me an offer of mediation, we shall continue in the pursuit of our political goal." And the most decisive thing is that the words: "Annihilation of Poland in the foreground, the aim is to eliminate the living forces and not to reach a determined line," have not been used; Hitler only spoke of the breaking up of the military forces.

These differences in individual words and turns of phrase are very important. For the differences lie precisely in the sharp phrasing to which the Prosecution frequently drew attention, and from which the intention of a war violating international law, even the intention to assassinate civilians can be derived. If these phrases had been spoken, we would justly reproach the Commanders-in-Chief present with having waged the war at Hitler's order, in spite of the criminal end in view. If, however, these sentences have not been used, but, as Boehm testifies under oath, merely sentences aiming at the establishing of a military goal, the Prosecution cannot reproach any of the Commanders-in-Chief present with having remained at their posts. No one can in earnest demand of an Admiral the resignation of his post a few days before the outbreak of a war, thus shaking the military power of his own Fatherland. I am quite sure that the most serious reproaches can be leveled at any rate against Hitler's attitude after the Munich Agreement up to the outbreak of the war in Poland, but—and this is decisive for the Raeder case—not against the military command, but exclusively against the political Fuehrer. We know that Hitler himself also admitted this, and evaded the responsibility by committing suicide, without having the slightest regard even for the life and the well-being of the German people during and especially at the end of the war.

d. Hitler's speech delivered to the Commanders-in-Chief on 23 November 1939 (*798–PS, USA 23*) :

I believe I can cut it relatively short with regard to this last key document. Again, it is a document without signature, the author of which, therefore, is not known, and without any indication as to the date of writing. It is no official transcript; again it pursues a special trend. Early in November 1939 a serious difference arose between Hitler and the Generals; for Hitler intended to start the offensive in the West immediately, whereas the Generals were of a different opinion, and apparently hoped that the outbreak of a real World War might still be avoided. Hitler's dissatisfaction and annoyance with his Generals show themselves clearly. In consequences of this, he strives to show by customary repetition of his former actions what he has accomplished and further to show that he has always been in the right. It is really a typical Hitler speech which corresponds to his public speeches in which he also loved to put on airs and to boast of being gifted with genius. Hitler, after all, belonged to those people who always believe themselves in the right and avail themselves of every opportunity to prove it. He further took the opportunity of stifling at birth, by threats, resistance in high military circles, resistance which had become known to him, and in this way of establishing his dictatorship. It is absolutely significant when he says literally in this document: "I shall not shrink from anything and will destroy everyone who is against me." This has also been recognized by leading foreign military personalities. I refer for example to General Marshall's official report which speaks about the "Lack in far-reaching planning in military respect" and in particular about the fact that the German High Command did not have an all-embracing strategic plan, and points out in this connection that "Hitler's prestige reached the stage that one no longer dared to oppose his views."

Finally it only remains to be pointed out in this last key document that at this time the war was already in progress, and that the higher military officers cannot be blamed if in the war they strove in all their plannings to come off victorious. The Allies were also planning at the same time. I refer to the documents Ribbentrop Exhibit 22 and Raeder Exhibit 34. The former document dates from 1 September 1939; it is a confidential letter from General Gamelin to Daladier, and contains the basic idea that it is necessary to invade Belgium in order to wage the war outside the French frontier. The latter document deals with military plans in the same way in a confidential letter from General Gamelin to General Lelong, military attache of the French Embassy in London, of 13 November 1939, and also concerns the enterprise in Holland and Belgium planned by the Allies.

IV

I now come to the events of the wartime period. I think I have shown that the navy had an extremely insignificant part in all events prior to the War, and that the transactions in which the navy was authoritatively involved were carried out on a peace basis, namely, on the basis of the Naval Treaty with England. When the war nevertheless ultimately broke out on the 3 September 1939, also involving England, a regrettable incident occurred at the outset, on the first day, namely the sinking of the "Athenia," from which the Prosecution attempts, in exaggerated terms, to construe a ponderous moral accusation against Raeder, not so much indeed on the basis of its actual military side, that is, the sinking, which my colleague Dr. Kranzbuehler has already discussed, as on account of an article published in the "Voelkischer Beobachter" of 23 October 1939 and entitled "Churchill Sank The Athenia." Were the statement of facts brought forward by the Prosecution correct, the moral accusations against Raeder and the navy would be justified, even though, of course, an untruthful newspaper article is no crime. Consequently, the accusation brought by the Prosecution is only made for the purpose of deprecating Raeder's personality in contradiction to the life-long esteem which Raeder has enjoyed in the whole world and especially abroad.

I think the evidence has sufficiently revealed that the statement of facts presented by the Prosecution is not correct. Surely this must be our conclusion if the Prosecution believed at first that the odious article in the "Voelkischer Beobachter" could not have appeared without the knowledge of the Naval Command. The Prosecution believed this because, in view of their conspiracy complex, they think there was permanent intelligence and close cooperation between the various departments in every case. The course of the Trial has shown how little this assumption is correct. The opposition between the individual departments and especially between the navy and Propaganda Ministry, between Raeder and Goebbels was far greater than the opposition between individual departments in a democratic State. Consequently, the testimonies of witnesses Raeder, Schulte-Moenting, Weizsaecker, and Fritzsche, together with the documents, establish the following facts absolutely clearly:

1. In early September 1939 Raeder himself firmly believed that the sinking was not imputable to a German U-Boat because it was revealed by the reports that the nearest German U-Boat was at least 75 nautical miles away from the spot of the sinking.

2. Accordingly, Raeder, as stated in Document D–912, published a "bona fide" denial, and issued declarations to this effect to the American Naval attache and to the German Secretary of State Baron Weizsaecker.

3. Raeder did not realize the mistake until after the return of the U–30 on the 27 September 1939.

4. Hitler insisted, as evidenced by witnesses Raeder and Schulte-Moenting, that no rectification of the facts should be made to any other German or foreign department, that is to say, that the sinking should not be acknowledged as caused by a German U-Boat. He apparently yielded to the impulse of political considerations and wished to avoid complications with the USA over an incident which could not be remedied, however regrettable it was.

5. Fritzsche disclosed that after the first investigation by the navy in early September 1939, he made no further investigation and that the "Voelkischer Beobachter" article appeared as a consequence of a complete agreement between Hitler and Goebbels, without previous notice to Raeder. On this point the testimonies of Raeder and Schulte-Moenting coincide. It is consequently clear that Raeder—in contradiction to the claim of the Prosecution—was not the author of the article and moreover had heard nothing about the article before its appearance. I regret that, in spite of this clarification, the Prosecution apparently are intent upon per-

sisting in their claim by the production, on the 3 July 1946, of a new Document D–912.

This newly submitted Document contains only radio broadcasts by the Propaganda Ministry which are of the same kind as the "Voelkischer Beobachter" article. These radio broadcasts were a propaganda instrument of Goebbels and cannot, any more than the article, be brought up as a charge against Raeder, who, in fact, was at the time informed of the article only and not of the radio broadcasts. Even the fact that Raeder did not attempt any rectification after being informed of the article, cannot be made a moral charge against him since he was bound by Hitler's order and had no idea at the time that Hitler himself had a hand in the article which Weizsaecker aptly described as perverse fantasy.

I venture, in this connection, to remind the Tribunal that it is a notorious fact that precisely at the beginning of the war, inaccurate reports also appeared in the English press about alleged German atrocities which even after this clarification were not rectified, as for instance, the false report about the murder of 10,000 Czechs in Prague by German elements in September 1939, although the matter had been cleared by a commission of neutral journalists.

The Prosecution believe they possess overwhelming material against all the defendants. If this presumption were correct with reference to Raeder, the Prosecution would scarcely have felt the necessity of bringing forward precisely this "Athenia" case in such ponderous and injurious terms with the sole purpose of discrediting the former Commander-in-Chief of the German Navy.

V

Concerning Greece the Prosecution makes accusation against Raeder of violation of neutrality and breach of international law, namely:

1. On the basis of Document C–12, according to which Hitler decided on the basis of a report by Raeder on 30 December 1939 that:

"Greek merchant ships in the zone around England which the USA declared prohibited are to be treated like enemy ships."

2. According to Document C–167 on the occasion of delivery of a report to Hitler on 18 March 1941, Raeder asked for confirmation that "all of Greece is to be occupied, even in case of peaceful settlement."

In the course of the trial both accusations have turned out to be without support; in both cases there is no action which violated international law.

Ad 1. Raeder and the German naval command learned in October/November 1939 that quite a number of Greek merchant ships had been put at the disposal of England, either at the instance or with the approval of the Greek government. This fact cannot be reconciled with strict neutrality and, according to principles of international law, it gave Germany the right to take an equivalent countermeasure. This justified countermeasure consisted in treating Greek ships, which sailed for England, as enemy ships from the moment they were in the zone around England which had been declared prohibited by the United States.

Ad. 2. Germany, especially the High Command of the Navy, had received reports that certain Greek military and political circles maintained the closest connection to the Allied General Staff ever since 1939.

In time there had been more and more reports. What the Allies were planning on the Balkans is known; the intentions were the erection of a Balkan front against Germany. For this purpose local conditions in Greece, as well as in Rumania, were examined on the part of the Allied General Staff of the Allied officers in order to build airplane bases there. Furthermore preparations were made to land in Greece. As proof I have presented as Raeder Exhibit 59, the minutes for the session of the French war committee of 26 April 1940, which shows that the war committee at that time had already checked the question of possible operations in the Caucasus area and on the Balkans, from which results the activity of General Jauneaud in Greece for the continuation of investigations and preparations and the attempt to camouflage the trip by making it in civilian clothing.

This attitude of Greece and especially her agreement with Allied plans represents a violation of neutrality on the part of Greece; for Greece did not appear as England's ally, but formally continued to maintain her neutrality. Therefore Greece could no longer figure that Germany would fully respect Greek neutrality. Germany nevertheless respected Greek neutrality for a long time to come. The occupation of Greece took place in April 1941 only after British troops had already landed in Southern Greece on 3 March 1941.

The fact that Greece agreed to the English landing is, according to generally recognized rules, without importance in international legal relations and for the international legal decision between Germany and England and between Germany and Greece; it has importance only for the legal relations between England and Greece.

The British Prosecution tried to justify the occupation of Greece with the fact that Greek neutrality was menaced by Germany, especially by the occupation of Bulgaria on 1 March 1941. Herein the Prosecution is overlooking that not only the execution of the occupation of Greece by British forces, but also the planning of the Allies started essentially earlier than the German planning. But however that may be, no accusation, at all, can be raised against Raeder; because the date of Document C–167 submitted by the Prosecution is 18 March 1941, which means it is 14 days later than the landing of the English in Southern Greece. In any case, at that time Greece could no longer demand that her alleged neutrality be respected. But beyond that the accusation is also unjustified, when the Prosecution points out that Raeder asks for confirmation for all of Greece to be occupied. This question of Raeder was not a causal factor for the fact that all of Greece was occupied: for Hitler had provided already in his Order 20 of 13 December 1940—1541–PS—that the entire Greek continent was to be occupied in order to frustrate English intentions of creating a dangerous basis for air operations under the protection of a Balkan front, especially for the Rumanian oil district. In addition to that the inquiry of Raeder on 18 March 1941 was justified on strategic grounds because Greece offered many landing possibilities for the English, and the only possible defense was for Greece to be firmly in the hands of Germany, as witnesses Raeder and Schulte-Moenting have explained.

This strategic idea of Raeder had nothing to do with plans of conquest or desire for glory, as the Prosecution thinks; for the navy won no glory whatsoever in Greece because the occupation was a land operation, and the occupation of an originally neutral country is simply the regrettable consequence of such a big war; it cannot be charged to one belligerent if both belligerents had plans concerning the same state and carried out these plans.

VI

I should like now to go on to the subject of Norway. On 9 April 1940, troops of all 3 sections of the German Armed Forces occupied Norway and Denmark. From this and the preceding plans, the Prosecution have drawn up the most grave accusation against Grand Admiral Raeder, alongside, I understand, with the collective charge of participation in a conspiracy.

The British Prosecutor has pointed out that it was Raeder who first suggested the occupation of Norway to Hitler and believes that Raeder accomplished the occupation out of a spirit of conquest and vainglory. I propose to demonstrate that this argumentation is incorrect. Only one thing is correct, that is, that in this single instance Raeder took the initiative of first approaching

Hitler on the subject of Norway, namely, on the 10 October 1939. I shall, however, show that he has in fact acted not as a politician but exclusively as a soldier. Raeder sensed purely strategic dangers, and pointed out these strategic dangers to Hitler, because he assumed that the Allies contemplated the establishment of a new front in Scandinavia, in Norway in particular, and knew that an occupation of Norway by England could have a militarily decisive consequence to the detriment of Germany. I shall show that Germany has committed no violation of international law by the occupation of Norway. Before I state the juridical foundation and connect the facts established by the appraisal of evidence with the principles of international law, I should like first to state an important fact:

It is very reluctantly that Raeder acted as Commander-in-Chief of the German Navy in the Norway action, as is disclosed by his own and Schulte-Moenting's interrogations. Raeder had the natural feeling of justice that a neutral state could not be drawn into the existing war without an absolutely imperative emergency. In the period between October 1939 and Spring 1940, Raeder had always defended the opinion that by far the best solution would be that Norway and all Scandinavia remain absolutely neutral. This, Raeder and Schulte-Moenting disclosed unanimously at their interrogation, and it is, moreover, proved by documents. For this, I refer to Raeder Exhibit 69. In this, the conviction of Raeder that the most favorable solution is undoubtedly the preservation of the strictest neutrality by Norway is entered in the War Diary on 13 January 1940. Raeder had clearly convinced himself that an occupation of Norway by Germany for motives of international justice or strategy could only be conceivable if Norway could not or would not maintain an absolute neutrality.

The Prosecution has referred to the treaties between Germany and Norway, in particular to Document TC–31, in which the German Government on 2 September 1939 expressly assures Norway of her inviolability and integrity. In this memorandum, the following legitimate remark is added:

"If the Reich Cabinet makes this declaration it, of course, also expects that Norway, in turn, will observe irreproachable neutrality toward the Reich, and that it will not tolerate breaches of Norwegian neutrality should attempts along that line be made by third parties."

If despite this fundamental attitude, Germany yet decided to occupy Norway, this was done because of the threat that the plans of the Allies created the danger of occupation of Norwegian bases by them. In his opening speech Sir Hartley Shawcross declared that according to the indictment, Germany's breach of neutrality and its war of aggression against Norway remained criminal, even if Allied plans for occupation had been correct; and he added that in reality such plans were not true. I believe that the argument advanced here by Sir Hartley Shawcross is contrary to accepted international law. If Allied plans for the occupation of Norwegian bases existed, and there were danger that Norway neither would nor could maintain strict neutrality, in such a case accepted standards of international law did justify Germany's Norway campaign.

I may first revert to the juridical angle according to accepted standards of international law in order to create a foundation for my own reasoning, while I shall at the same time try to set forth the legal viewpoints which contradict the Prosecution's interpretation. In order to save time in this legal exposition, and in order to make the conception comprehensible I have submitted as Raeder Exhibit 66 an opinion on international law on the Norway Campaign by Dr. Hermann Mosler, a Professor of International Law at the University of Bonn. The High Tribunal will bear in mind that I was given permission to make use of this opinion for purposes of argumentation and I may therefore refer at this point to this detailed scientific compilation and argument. In my final pleading I shall confine myself to a summary of the most essential concepts of legal opinion.

Articles 1 and 2 of the Hague Convention on Rights and Obligations of Neutrals in the event of Warfare at Sea stipulate that "the parties at war are bound to respect the rights of sovereignty of neutral powers in the territory and coastal waters of the neutral power," and that all unfriendly acts on the part of the belligerent parties within the delimitation of the coastal waters of a neutral power "are strictly banned as violations of neutrality." Contrary to these stipulations, Great Britain violated Norway's neutrality through the laying of mines in Norwegian coastal waters for the purpose of obstructing the legitimate passage of German warships and merchantmen, especially in order to cut off the exportation of iron ore from Narvik to Germany. In the letter of the Foreign Office which I received in reply to my petition for authorization to submit files of the British Admiralty, confirmation as per Raeder Exhibit 130 was received to the effect that His Majesty's forces laid mine fields in Norwegian waters, and in addition it was stated that this was a well known fact.

It should be an uncontested fact that thereupon Germany was justified in reestablishing the disturbed equilibrium between the belligerent parties, in other words in wresting from the enemy's forces the benefit they were deriving from violation of neutrality.

Reaction against such violation of neutrality is primarily directed against the adversary and not against the neutral party. Legal relationship deriving from neutrality exists not only between the neutral party and the two belligerent parties, but the neutrality of the respective neutral State is at the same time a factor in direct relations existing between the belligerent parties. If the relationship of neutrality between one of the belligerent parties and the neutral Power suffers disturbance, the neutral Power can in no way file a complaint if the other belligerent Power take appropriate action, in which case it is entirely immaterial whether the neutral State is unable or unwilling to protect its neutrality.

The legal title under which the prejudiced belligerent Power can proceed to countermeasures is the "Recht der Selbsterhaltung" ["the right of self-preservation"]. As brought out in detail by legal opinion, this right of self-preservation is generally accepted by international law. It may suffice to point out here that this basic law is not affected by the Kellogg Pact so often mentioned in this Court. I may therefore also ask permission for a brief quotation from the circularized memorandum of the American Secretary of State Kellogg dated 23 June 1938, as follows:

"There is nothing in the American draft on an anti-war treaty which restricts or impairs the right of self-preservation in any manner. That right is inherent in every Sovereign State and is implicit in every treaty."

Justice Jackson will permit me to mention that he himself, in his opening speech of 21 November 1945, referred to "the right of legitimate self-preservation."

It is interesting that in his address before the Parliament, on 8 February 1940, the Swedish Foreign Minister Guenther recognized this idea, although he protected the interests of one of the belligerents and although this speech was made before Germany proceeded to retaliatory measures in Norway. In that address Guenther took the attitude to the English declaration that Sweden's neutrality would be respected so long only as it would be respected by England's enemies. Guenther took cognizance of the fact that Sweden, in its relationship with England, would lose its neutrality should Germany violate Sweden's neutrality and should Sweden not be willing or able to prevent such violation of neutrality through Germany. Consequently, so said Guenther, Great Britain would no longer be held to treat Sweden as a neutral country. It is clear that the conclusions drawn by Guenther in the event of a breach of neutrality through Germany must also apply to the tri-partite legal relationship between Great Britain—Germany—Norway. The real aim, however, and this I shall set forth in my presentation of evidence, was not Great Britain's mining actions in Norwegian coastal waters, but a much further-reaching Anglo-French scheme aiming at the occupation of Norwegian bases and of a portion of the Norwegian home territory. The mining action enters into the picture merely as a part of the total plan.

According to Mosler's opinion and in the light of the above remarks, it is absolutely certain that Germany was justified in occupying Norway had the Allies carried part of their plan into effect by landing at a Norwegian base before German troops made their appearance. This, however, did not occur; rather, as I will show, the situation was that Germany anticipated an Anglo-French landing, in other words decided for countermeasures on account of the imminent danger which threatened.

Legally a second question should also be investigated: Assuming the same conditions, are countermeasures not permitted until after the other belligerent has proceeded to violate neutrality, or is reaction permitted in the presence of the imminently threatening violation of neutrality in order to anticipate the enemy's attack?

According to the findings composed by Dr. Mosler the preventive countermeasure is permissible, and the directly impending violation of neutrality which can be expected with certainty is to be considered equal to a completed violation of neutrality.

The well-known Anglo-Saxon specialist on international law, Westlake, states to the question of the preventive measure:

"Such a case in its character resembles that one, that a belligerent has the certain knowledge that his opponent, in order to gain a strategic advantage, is just about to have an army march through the territory of a neutral who is apparently too weak to resist; under these circumstances it would be impossible to refuse him the right to carry out the attack on the neutral territory first."

The justification for such a preventive measure, according to Westlake lies in the right for self-preservation which also applies against a threatening violation of neutrality. Another concept would also have been not true to life and would not correspond to the character of the society of nations as a majority of sovereign states with an as yet incompletely developed common law code. In the innerstate law system of every civilized country, the repulsing of an immediately threatening attack is a permissible defense act, although there even the help of the state against the lawbreaker is furnished. In the society of international law, where this was not the case, anyway not at the beginning and during the 2d World War, the viewpoint of self-preservation must apply to an unequally stronger extent. In conjunction with this concept, the British government during this war also considered the preventive measure as justified, when it occupied Iceland on 10 May 1940. The British government has justified this measure clearly and correctly in accordance with international law in an official announcement of the Foreign Office, as follows:

"After the German occupation of Denmark it has become necessary to count on the possibility of a sudden German advance to Iceland. It is clear, that the Icelandic government, in view of such an attack, even if it was only carried out with very small forces, would be unable to prevent its country from falling into the hands of the Germans completely."

The preventive measure was carried out, although Iceland expressly defended herself in a note of protest against the occupation.

I also ask to note that the United States agreed with this standpoint of law, as is proven by the well-known message of the President of the United States to Congress of 7 July 1941, and the subsequent occupation of Iceland through armed forces of the American Navy.

In accordance with these basic principles of law, the charge at hand must be examined. I have tried to clarify the charge in the presentation of evidence, and may I summarize the major viewpoints which actually showed a closely impending violation of neutrality on the part of the Allies through the partial occupation of Norway, and thereby justified the German action against Norway.

At the end of September and early October 1939, Grand Admiral Raeder, as the presentation of evidence has shown, received various information through the current reports of Admiral Canaris as director of intelligence, and through General Admiral Carls, which let the danger be recognized, that the Allies, in accordance with their plans to encircle Germany, would occupy bases in Norway in order to halt in particular the imports of ore from Scandinavia.

English airplane-crews camouflaged in civilian clothing were seen in Oslo, and survey works by Allied officers on Norwegian bridges, viaducts, and tunnels up to the Swedish border were identified. Furthermore, the quiet mobilization of Swedish troops because of the endangerment of Swedish ore-territories had become known. Raeder was justified in considering himself obligated to report this state of facts to Hitler and to point out the danger to him which would arise for Germany, if English and French armed forces were actually to fortify themselves in Scandinavia. The dangers were clear. They consisted of the cutting-off of all imports from the industrial areas of Scandinavia, in particular of the ore-imports, as well as in the fact, that the Allies obtained a favorable base for air attacks, and last but not least in the fact, that the German navy was threatened in its flank and its operational potentialities were limited. (Transcript, Morning Session, 22 May 1946.)

The blockade of the North Sea and Baltic would have had strategically disastrous consequences.

As the information did not yet offer a final over-all picture, Raeder did not suggest immediate occupation, but only pointed out the dangers in order to wait for further developments for the time being. Hitler therefore also did not make a final decision during this discussion of 10 October 1939 but agreed to wait. Similar information was received during the months of October and November and now also by the Naval attache Lieutenant Commander Schreiber who had in the meantime been sent to Oslo to whose Affidavit (Raeder Exhibit 107) I refer. The Norwegian shipping association had made tanker tonnage of about 1 million tons available to England with the consent of the Norwegian Government (*see also Raeder Exhibit 86, War diary of 6 April 1940*) according to which 90 percent of the Norwegian tankers had been put at the disposal of England.

In Winter 1939–40, the information concerning espionage missions of the English and French Secret Service to Norwegian agents and English harbor consulates for the purpose of reconnoitering landing opportunities and examination of Norwegian Railroads with regard to their capacity, particularly the Narvik line and missions concerning information about land and sea airports in Norway, took more definite form. By reason of the fact that the information from 2 different sources, namely the Naval Attache Oslo and Admiral Canaris, corresponded and became gradually more extensive during the months of October to December 1939, the reported danger seemed to increase slowly all the time.

In addition, in December 1939 Quisling and Hagelin sent to Rosenberg—entirely independent of the sources of information which had existed up to that time—the same or similar information concerning the landing intention of the Allies, and not directly to Raeder, for the only reason that Raeder didn't know either Quisling or Hagelin at that time. As the question involved was a purely military-strategic one, Rosenberg asked Raeder to discuss things with Quisling so that Raeder could examine the military technical possibilities in consideration of the fact that an aggression by the Allies in Scandinavia must be expected according to the information received. This is evident from the letter of Rosenberg to Raeder of 13 December 1939 which I submitted as Raeder Exhibit 67. Raeder now considered it his duty from the purely military point of view to inform Hitler with whom he had not discussed this question in the meantime that corresponding information had meanwhile been received from Canaris, the Naval Attache in Oslo and Quisling. Hitler wished to speak personally with Quisling, which he did, and decided then to make the necessary preparations for a possible preventive measure to counter the danger threatening, namely, the occupation of Norway (C–64 —GB 86 of 12 Dec. 1939, where it is pointed out that the danger of the occupation of Norway by England was very threatening, and that Norway must not fall into the hands of England, as this could be of great importance to the course of the war).

The final decision was still deferred and information as to what further news would be received and whether the danger increased was awaited.

This caution and delay seems particularly understandable in the case of Raeder. As I have already remarked, Raeder would have preferred if the strict neutrality of Norway had been maintained, especially as he was against every conquest just for the sake of conquest. He knew on the other hand that an occupation required the commitment of the whole navy, thus involving the fate of the entire navy, and that the loss of at least a third of the fleet had to be reckoned with. It should be clear without further ado how hard, from such political and strategic view-points, such a decision was for a conscientious man and soldier.

There was more news unfortunately during the first months of the year 1940 and always more definite. In March 1940 surprisingly many English speaking persons could be seen in Oslo, and Raeder received very serious information, worth of credit, about shortly impending measures by the Allies against Norway and also Sweden. As far as landing intentions were concerned, Narvik, Drontheim, and Stavanger were mentioned. Thus it came about that the military planning only took place in February and March and that the final instructions were issued to the Wehrmacht even as late as March 1940. (*See testimony Schulte-Moenting of 22 May 1946, morning session of transcript.*)

There were also numerous violations of neutrality in March 1940 which have been collected in the war diary (*Raeder Exhibit 81; see also further entries in the war diary of 27 March 1940 Raeder Exhibit 82*), and also the mine laying in Norwegian territorial waters at the beginning of April.

The Prosecution has delivered only a few documents against this comprehensive information material, according to which the German Ambassador in Oslo, Braeuer, did not regard the danger so great, but believed that the English attitude, mentioned also by him, pointed merely to provocation of Germany in order that Germany might give cause for war operations in Norwegian waters. (*D–843, GB 466; D–844, GB 467; D–845, GB 486.*)

Baron Weizsaecker's point of view in cross-examination was that at first he did not consider the danger so great, but admitted that later on the facts proved that he and Braeuer were wrong, but Raeder on the contrary was right in his apprehension.

This objective accuracy of the conception of Grand Admiral Raeder and of the information which was the basis of his conception is shown from separate documents submitted by me and accepted by the Court.

Since 16 January 1940, the French High Command had been working on a plan which had in view, amongst other things, the occupation of harbors and flying fields on the West Coast of Norway. The plan contemplated in addition that the operations should possibly be extended to Sweden and the mines of Gaellivare be occupied. Efforts have been made to justify this plan by stating that it was elaborated solely to help Finland against the Soviet Union. To begin with it could be objected that an action in support of Finland does not justify any occupation of Norwegian territory. Moreover the documents show that it was not a question of only altruistic measures in favor of Finland. During the interallied military conferences on 31 January and 1 February which preceded the meeting of the Supreme Council on 5 February, the question of direct help for Finland was relegated by the English to the second place; they showed themselves to be determined adherents of an enterprise against the mines of Northern Sweden. This is confirmed by General Gamelin in a note of 10 March 1940 and he adds that this opinion obtained the majority vote in the Supreme Council, and that the preparation of the Scandinavian Expedition should be started immediately. And so it came about that the Franco-British fighting forces had been ready for transportation since the first days of March, whereby, according to Gamelin, the leadership of the proposed operations in Scandinavia was transferred to the British High Command. Gamelin adds finally that the Scandinavian plans must be resolutely pursued further in order to save Finland "or at least to lay hands on the Swedish ores and the Northern harbors".

Lord Halifax informed the Norwegian Ambassador on 7 February that England wished to obtain certain bases on the Norwegian coast in order to stop the German transport of ore from Narvik.

In mid-February, English and French general staff officers visited landing places in agreement with the Norwegian authorities.

According to a report of the Embassy in Stockholm, dated 16 February 1940, the English intention in this respect was to land troops simultaneously in Bergen, Drontheim, and Narvik.

On the 21 February 1940, Daladier communicates to the French Ambassador in London, Corbin, that the occupation of the most important Norwegian ports and the landing of the 1st Division of the Allied Fighting Forces in Norway would give Sweden a feeling of security and goes on to say that this operation must be planned and executed at shortest notice, "independently of Finland's call for assistance." In the event of this "demarche" in Norway meeting with refusal, which was likely, the British Government was to confirm the Norwegian refusal and immediately seize control of the bases it needed for the safeguarding of its interests, and was to do so in the form of a "surprise operation." Whether Sweden refuses the passage through to Finland does not appear important; what is emphasized is rather the "advantage of having secured a dominating position against Germany in the North, interrupted the sea transport of Swedish ore, and brought the Swedish ore districts within the radius of action of our aviators".

On the 27 February 1940, Churchill declared in the British House of Commons that he was "tired of considering the rights of Neutrals."

It is interesting to note that unanimity is achieved in the 6th session of the Supreme Council on the 28 March 1940:

"Every attempt of the Soviet Government to obtain from Norway a position on the Atlantic coast runs counter to the vital interests of the Allies and would elicit due countermeasures."

The conception thus defended by the Supreme Council with reference to the vital interests of the Allies coincides exactly with the legitimate notions of "right of self-preservation" presented by me and is in complete contradiction to the interpretation of international law propounded in this respect by the Prosecution.

The ultimate execution of the operation in Norway, that is, the landing and the constitution of bases, was decided on the 28 March 1940 between the authoritative British and French departments. This date was indicated at a session of the French War Committee by the French Prime Minister, and General Gamelin added that he had on the 29 March impressed upon General Ironside the necessity of having everything ready for a swift occupation of the Norwegian ports. He said he had also informed Mr. Churchill to the same effect on the occasion of a visit to Paris.

On the 30 March, Churchill declares on the Radio:

"It would not be fair if, in the fight for life or death, the Western Powers adhered to legal agreements."

On 2 April 1940, at 19:12 o'clock, London notified Paris by telegram that the first transport was "to sail on J. 1. day" and that J. 1 day was in principle 5 April.

On 5 April Earl De La Warr established that neither Germany nor the Neutrals could be certain that "England would allow her hands to be tied behind her back while following the letter of the law."

The English Minister of Labor Ernest Brown declared on 6 April 1940 that neither Germany nor the neutrals could be certain that the Western Powers would adhere to the letters of international law.

On the same day—this was one day after the laying of mines in Norwegian territorial waters—a secret English operational order was given "concerning preparations for the occupation of the northern Swedish ore fields outside Narvik."

In this order it was decided that the task of Avonforce consisted first of all in "securing the port of Narvik and the railroad to the Swedish border." It was added that it was the intention of the Commander-in-Chief to advance into Sweden and to occupy the Gaellivare ore fields and important points of that territory as such an opportunity occurred, a formulation, which almost reminds one of the words in prosecution Document L–79: "to attack Poland at the first appropriate opportunity."

The original plan to send the first transport to Norway on the 5 April was altered; for on the evening of the 5 April, the British High Command informs the Commander-in-Chief of the French navy that "the first English convoy could set out before the 8 April which, within the framework of the established time schedule, means that the first French division is to leave the embarkation port on the 16 April".

To complete the story, let it be pointed out that the Norwegian operation was designated by the allies by the camouflage name of "Stratford-Plan," meaning the action, while the German Norwegian operation was referred to by the camouflage name of "Weser Exercise" (Weseruebung).

The preceding facts show that:

Since Autumn 1939, preparations for eventual action in Norway were made by the studying of landing possibilities. Since January/February 1940 the danger of an occupation of bases in Norway by the Allies was threatening. In March 1940, the execution of the scheme was ultimately decided upon and the departure of the first convoy scheduled for the 5 April. Simultaneously, mine-laying was carried out in the Norwegian territorial waters and troops were at the same time concentrated in British and French ports for the Norwegian operation. Thus, factual illegality in the form of imminent neutrality violations existed from the point of view of international law, and neutrality violation had indeed been already committed to a certain extent (mine-laying). This was the point where Germany, in accordance with the international notion of the right of self-preservation, was entitled to resort to equivalent measures, that is, to occupy Norway and prevent the threatened occupation by other belligerent States. It was, in fact, as was shown later, the last moment; for Germany frustrated the allies only because the British High Command had postponed the departure of the first convoy originally scheduled for the 5 April. The German operation in Norway must therefore be considered as legitimate according to the principles of international law. I have the firm conviction that the High Court, in view of the circumstances just exposed in relation to existing international law, will conclude that Grand Admiral Raeder has, with regard to the occupation of Norway, acted from purely strategic points of view in due consideration of international legal standards and accordingly acquit him of the charge made by the Prosecution.

With reference to Norway, the Prosecution has moreover charged against Raeder and incidentally against Doenitz that a violation of international law is entailed by the fact that according to an order dated 30 March 1940, the Naval Forces were, until the landing of troops, to fly the English flag. (*C–151, GB 91; C–115, GB 90.*)

This too is an error of the Prosecution as regards international law for sea warfare. The Hague regulation on land warfare does expressly forbid the abusive flying of flags. But in sea warfare the answer to this question, according to the prevailing international law, is definitely that until hostilities begin, ships may sail with their own or with enemy or neutral flags or even with no flags at all. I take the liberty, in this respect, of availing myself of Dr. Mosler's juridical treatment of the question in his judgment appearing under item 7 and in particular of his references to scientific literature on the subject, according to which the use of a foreign flag is universally considered as a legitimate war deception and is allowed and especially condoned by British practice, this in accordance with the historical precedent when

Nelson, in the Napoleonic wars, flew the French flag off Barcelona to lure the Spanish ships.

This dispute is however superfluous in the present case because actually the order just mentioned instructing the flying of the English flag was according to documentary evidence cancelled on the 8 April, that is to say, prior to the execution of the Norway operation.

In conclusion, I only wish to emphasize with reference to the subject of Norway that after the occupation of Norway Raeder and the navy did everything they could to give a friendly character to the relations with Norway and to treat the country and the people honorably and well during the occupation, and to spare them every unnecessary burden. Raeder and the Admiral Commanding in Norwegian waters General Admiral Boehm have moreover endeavored to conclude a peace with Norway guaranteeing Norwegian national interests. Their efforts were frustrated by the institution by Hitler and Himmler of a so-called civil administration by the Reich Commissioner Terboven which unlike the Wehrmacht was connected with the Party, the SS, SD, and Gestapo. As confirmed by Boehm in his affidavit, Raeder repeatedly intervened with Hitler in favor of the ideas he shared with the Admiral in Command in Norwegian waters for good treatment of the Norwegian people and an early conclusion of peace and, together with Boehm, set himself with the utmost vigor against Terboven. Again, the tragic event is repeated here that the Wehrmacht, despite its utmost efforts, has neither been able to oppose Hitler's dictature nor the dictature exercised to Hitler's knowledge by such a mediocre Reich Commissioner as Terboven. The Norwegian people who had to suffer under the occupation know—and this is the only gratification for Raeder—that the navy was not the cause of these sufferings. On the other hand, it is interesting to know that the differences which cropped up between Hitler and Raeder with reference to Norway are precisely one of the chief motives which caused Raeder ultimately to insist upon his resignation. Other motives were that Raeder also had differences with Hitler, with reference to France, because here again Raeder urged the conclusion of peace, while Hitler with his excessive character was opposed to conciliatory steps of this kind in occupied countries. Raeder also had differences with Hitler with reference to Russia, because he was in favor of observance of the German-Russian treaty and declared against the breach of the Treaty and against war with Russia.

VII

I now come to the charge of the Prosecution with regard to a war of aggression against Russia. The charge of the Prosecution on this subject cannot be very well understood. It dealt with land warfare so that the navy did not have to meet any preparations with the exception of the few preparations in the Baltic Sea. The Prosecution itself has furthermore stated that Raeder had been opposed to the war against Russia. The only thing which could remain from the charge of the Prosecution is its claim (Transcript, afternoon session, 13 May 1946) that Raeder had fundamentally been in favor of the war against Russia also and had only been opposed to Hitler with regard to the time factor. With reference to C–170 the Prosecution states that Raeder had only recommended the postponement of the war against Russia until the time after the victory over England. According to Document C–170 this actually could appear this way. In reality, however, the case is different, and the true state of affairs has been cleared up by the detailed presentation of evidence. The witness Admiral Schulte-Moenting has clearly stated, without being contradicted in the cross-examination, that Raeder not only raised objections with regard to time limits, but that he fundamentally argued with Hitler against a campaign against Russia, and that because of moral reasons and reasons of international law; just because he was of the opinion that the nonaggression pact with Russia, as well as also the trade agreement would have to be observed under all circumstances. The navy was especially interested in the delivery agreements with Russia and has always tried to closely observe the treaties. Besides this basic principle of observing treaties, i.e., besides this general reason, Raeder represented the opinion that a war against Russia would also be false from the strategical standpoint. His own testimony and that of Schulte-Moenting show that in September, November, and December of 1940 Raeder tried again and again with Hitler to dissuade him from the thought of a war against Russia. It is correct that in Document C–170 only the strategical justification for his opposition has been recorded. However, this is not at all surprising because in the papers with the Naval Operations Staff naturally only justifications were recorded which were of naval technical and strategic importance, but not political reasons.

I have already shown that Hitler fundamentally did not permit that Raeder as Commander-in-Chief of the Navy intervene in foreign-political questions, i.e., in things which did not belong in his department. If Raeder did once try this, contrary to the will of Hitler, and that in cases of special importance, then he could do it only under four eyes and accordingly could not then record these conversations in the war diary; however, he has always told everything to his chief of staff as his closest confidant. As the result of this, Schulte-Moenting could confirm clearly that Raeder in this case opposed Hitler because of moral misgivings, also with regard to international law and furthermore also employed strategical reasons in the hope of being able to influence Hitler sooner in this manner. Schulte-Moenting even stated—just like Raeder—that in November the latter had gained the impression after a discussion that he had dissuaded Hitler from his plans. I believe that this has clarified the matter, and only the tragical factor remains here also that Hitler paid just as little attention to Raeder in regard to political objections to Russia also, as in regard to Norway and France.

VIII

A similar fact is the reproach of the Prosecution referring to the war of aggression against U.S.A. and the violation of the Neutrality of Brazil. As both these reproaches are sufficiently refuted within the framework of the evidence, I am only going to discuss them briefly.

According to the statement of the Prosecution, Raeder somehow collaborated in the plan to induce Japan to attack America. As a matter of fact no naval strategic conferences were held between Japan and Raeder. Raeder was always of the firm conviction that a war against the USA must be prevented just as much as one against Russia. This perception is also understandable, because, furthermore, it had always been his opinion that Hitler should never be allowed to start a war against England. Since the war against England had now come about, it was Raeder's duty as Commander-in-Chief of the Navy to use all his strength to fight successfully against England. Raeder knew the limitations of the fighting ability of the navy, and it was therefore quite out of the question that he should have collaborated in an extension of the war, considering as he did the conduct of a war against England as a too difficult task. The GB 122 Document C–152 submitted by the Prosecution mentions a proposition that Japan should attack Singapore and that the U.S.A. should be kept out of the war. This suggestion made to Hitler that Japan must attack Singapore was in all points correct.

We were now in a war against England, and Raeder was forced to try to concentrate all his forces against England. He was thus justified in suggesting that Japan—as Germany's ally—should attack England. Moreover this one discussion of Raeder was held on 18 March 1941, whilst Hitler in his Instructions 24 of 5 March 1941 had established the directive that Japan must attack Singapore which he considered a key position of England (*C–175, USA 151*).

According to the confirmation of Schulte-Moenting, Raeder was just as surprised as any other German by Japan's attack on Pearl Harbor. The Prosecution failed in its attempt to shake Schulte-Moenting's statement during his cross-examination by producing a telegram of the military attache in Tokio sent to Berlin on 6 December 1941. Not only had Raeder probably received this telegram after the attack had started, but in this telegram Pearl Harbor is not mentioned at all. (*D–872, GB 480.*)

That the charge of the Prosecution dealing with Brazil is refuted is proved by the fact that the Prosecution did not take up this point in any of the cross-examinations of Raeder, Schulte-Moenting, and Wagner. It deals with the charge that according to Jodl's diary, already 2 months before the outbreak of the German-Brazilian war, the Naval command had demanded the delivery of the arms needed against the Brazilian Warships and Merchantmen, which was agreed to. (*1807–PS, GB 227.*)

Apart from this testimony this case is refuted by documents, namely the complete excerpt of Jodl's diary, which I submitted as Raeder Exhibit 115 as well as by further submitted documents, Raeder Exhibit 116–118. These documents prove that Brazil had violated the rules of neutrality by permitting the USA to make use of Brazilian airdromes as a base for attacks on German and Italian U-Boats. The Brazilian Air Ministry has furthermore officially announced that attacks had been made by the Brazilian airforce. Considering such conduct against all rules of neutrality, the demand of the naval command for armed action against Brazilian Vessels is justified. In this case also the Prosecution did not succeed in proving Raeder to have committed a crime or even an offense against international law.

IX

The Prosecution has very carefully submitted an exceedingly large amount of material, and the many details implied necessarily great exactitude in the taking of evidence. I have endeavored to deal with all remonstrances regarding the evidence or in my pleading, and have endeavored to demonstrate that all the remonstrances, partly on factual, partly on legal grounds, do not represent the facts of a criminal case within the meaning of this Charter. In as far as I have not, in spite of my striving for great exactitude, dealt with certain documents, it was because they seemed to me of small importance, and in any case of no importance in criminal law, for instance the many cases in which Raeder was only mentioned because—without officially taking any part—he received a copy of the documents for routine reasons. It would have been tiring to go into such recurrent cases, even if the Prosecution unremittingly reiterated these formal indications, so that one was often inclined to remember the saying of Napoleon that repetition is that turn of speech which is the best evidence.

I further believe that in the final pleading for Grand Admiral Raeder I may leave aside an argumentation regarding the real war crimes or crimes against humanity, as I cannot establish any connection between these and Raeder from the material submitted by the Prosecution. Further no particular reproach is made against Raeder in this connection with the exception of the two cases connected with the commando order, namely the shooting of two soldiers in Bordeaux and the shooting of the British soldier Evans who was made a prisoner by the SS on the Swedish border after he had previously participated in the small weapons attack on the "Tirpitz". Thus far the reproach has been refuted by testimony so far as it concerns the navy. Both cases did not come, or came only later, to the knowledge of the Naval Command just before Raeder's departure. In both cases the act was committed on the basis of the commando order of Hitler himself or by the Security Service (SD) without the knowledge and will of the Naval Command; and—what is the most important—in both cases the documents of the Prosecution showed that these soldiers were in civilian clothes, and therefore were not entitled to the protection of the Geneva Convention. (See Doc. D–864, GB 457 concerning Evans. Document UK–57, GB 164, page 4 of original under figure 2 concerning Evans, where in the English translation the words "in civilian clothes" were inadvertently missing, and UK–57, page 5 of original concerning the Bordeaux case, where the express reference to civilian clothing does also exist. See further my re-cross-examination concerning Admiral Wagner on 14 May 1946, transcript, morning session, also my re-cross-examination of Admiral Schulte-Moenting on 22 May, afternoon session.)

All other criminal facts which the Prosecution submitted especially for the East I need not deal with, as Raeder did not participate in them. I hope also to have the approval of the Court in mentioning the handling of the Katyn case, in which the Court pointed out that Raeder was not involved, and therefore refused my collaboration as Counsel in this connection; from this I intend to draw the legal conclusion that, even in this round about way by the conspiracy, Raeder cannot be considered as burdened with these criminal facts, since he did not know of these events and had nothing to do with said events.

The evidence of the Prosecution rests on the wish to have its theoretical basic assumption prevail and be acknowledged, namely the idea that so many crimes cannot have been the conception of a single person, but rather that they result from the conspiracy of many, that they must have originated in a plot. These conspirators could logically in the first place have been only Hitler's own collaborators, that is to say the real National-Socialists. As, however, Hitler wished to realize, and did realize, results of military and economic importance, something peculiar occurred: There were no specialists among the National-Socialists for these particular tasks. Most of the National-Socialist collaborators did not previously follow a trade requiring technical education. Hitler therefore, despite his desire to have only National-Socialists around him took on as key people in particular fields persons who were not National-Socialists, such as for instance Schacht for economics, Neurath for politics and, for military tasks, Fritsch for the army and Raeder for the navy. The Prosecution followed him in the interests of its conspiracy theory without paying attention to the fact that these were no National-Socialists, and therefore in the last analysis could not really be counted among the conspirators, and without taking into account that Hitler used these non-National-Socialists only as technicians in a well-defined field, and this moreover only as long it seemed absolutely necessary to him and therefore he agreed to the elimination of these men which at bottom were not in sympathy with him as soon as the differences between them seemed irreconcilable which was bound to happen sooner or later with each of them in his own particular field.

By this wide conception of the idea of conspiracy and by this extension of the Prosecution's fight against non-National-Socialists, the Prosecution has abandoned the basic concept which was formerly propagated abroad, namely that of the fight against National-Socialism, but not against the whole of Germany, two ideas which at no time and in no place have been really identical, as the Prosecution now tries to make out. I do believe that thereby the Prosecution also abandons President Roosevelt's basic idea.

But another factual and legal point of view has not been taken into consideration by the Prosecution. I mean the concept of division of competence in political law, that is to say the subdivision into individual competencies. This division of competence —resting on the idea of division of labor—has, in accordance with its essence, a separative character; it divides the field of work from the angle of local, functional, and technical points of view. For one thing it positively defines the limits within which any single division is to become active; at the same time it defines negatively the boundaries of this activity by specifying which are the things which no longer concern the agencies in question, that is to say where they must not develop any official activity.

In a democracy, an additional contact exists by virtue of the general Cabinet meetings and/or through the Prime Minister, the Reich President, or the Reich Chancellor. But it is different in a dictatorship, particularly if the dictator—as it was the case with Hitler in the National-Socialist State—uses the separation between the individual governmental departments with extreme skill and sees to it that the individual departments are as isolated as possible, with the result that all decision rests finally with him as the dictator, in which case he even plays out one department against the other.

The partitioning into governmental departments carried out in the National-Socialist State contradicts the concept of conspiracy especially distinctly, making it difficult for the individual to go above his own department in any manner.

This significance may be described by the following example: The formulation of political relations with other States, the contracting or rescission of agreements or alliances with other States, declaring war and concluding peace are matters within the jurisdiction of the authority directing foreign affairs, but they are not within the jurisdiction of the authorities concerned with domestic tasks, such as for instance the Reich Finance Administration, Justice, and the Military.

The result is: Since the decision concerning war and peace is not a matter of the military, the military has to accept the decisions made by the political leadership, decisions which have a binding obligation for the military authorities.

The military commander must assume for his department the consequences resulting from the decision. As soon as war is declared, the military forces must fight. They do not bear any responsibility for the war because they were not able to take part in the decision concerning the declaration of war.

Consequently for an army the concept of war of aggression exists in the strategic sense only. Moreover, every war, the waging of which is charged to it, is simply war regardless whether it may legally be justified or not.

Responsibility from the point of view of constitutional law and criminal law corresponds to the field of jurisdiction. Therefore, if the Comander-in-Chief of a branch of the Wehrmacht assumes responsibility solely for the waging of war, not for the causes leading to war, his responsibility in respect to strategic planning must be confined to planning as such, but not to the possible causes which brought about that war on which the strategic planning is based.

This constitutionally and criminally important division of governmental departments and the distribution of authority was carried out by Hitler in a particularly emphatic manner in the interest of strengthening his own power in many domains, such as for instance, the creation of "The Commissioner for the Four-Year-Plan" whose field of work actually belongs to the Ministry for Economics; the creation of Reich commissioner in the occupied territories, whose activity really comes under military administration, and, finally, a fact of interest in the case Raeder, the strict limitation between the three branches of the Wehrmacht and the elimination of the Reichswehr Minister of the and/or Minister of War who held the three branches of armed services together and unified them. The greater the number of the governmental departments became, and the more the departments were cut off from one another, the stronger Hitler became as a dictator as the only one with authority over all the innumerable agencies. But with this the constitutional as well as the criminal responsibility of the chief of the individual department decreased and with it also the responsibility for strategic planning in one individual department, in this instance the navy.

Consequently, the Commander-in-Chief of a branch of the Wehrmacht, thus for instance the navy, can in case of strategic planning only be responsible for the planning of naval strategy; he did not have an over-all view of the total planning. Total planning was discussed nowhere; politically and militarily it was in Hitler's hands exclusively because he alone was the center where all threads and all activities of the individual departments joined.

In addition, no purely strategic planning as such can be criminal because it is customary in every country and because in every country the military commander of a branch of the armed forces does not and can not know for what purpose the political leadership will use the plan prepared by him, whether it is a war of aggression or a defensive war.

The documents submitted in my document book prove convincingly that the military agencies, both of the Allies as well as in Germany, worked out strategical plans in the same way and in the same areas and at the same times, namely in regard to Norway, Belgium, Holland, Greece, Rumania, and moreover the Allied plans for the destruction of the Rumanian oil fields and especially of the oil sources in the Caucasus. Especially the plans concerning the Caucasus on the part of the Supreme Council, i.e., of the combined British and French General Staff, show the correctness of the statements. The Supreme Council would certainly decline to be made politically responsible for these strategical plans, although the Soviet Union was still neutral at the time thereof, and the execution of the plans were to strike not only the enemy country Germany, but also the neutral Soviet Union, as the documents also show.

The similarity of the documents concerning such plans is absolutely convincing and shows a strong parallel trend. May I point in this connection to my earlier statements made here on the occasion of the comprehensive discussion regarding the importance and admissibility of the documents submitted by me; may I also point in addition to Document Raeder Exhibit 130, namely, the letter of the Foreign Office in which submission of the British Admirality files is refused, but in which the plans in regard to Norway and the whole of Scandinavia are admitted, but with the addition that the planning was not transformed into action, a fact which depended only on Germany's having started the execution of the planning first.

One may be a pacifist and therefore basically opposed to military force, but then one must be consistent and must take a stand not only against German military force, but against any military force. One may condemn the fact that the military, as the operational authorities, prepare military plans, and may in future insist that such plannings are punishable. But then not only German military planning, but also foreign military planning must be punishable.

The above statements show that the Prosecution misjudges the actual and legal conditions, if it wishes to make Raeder responsible for political decisions, although he had nothing to do with them, but has always worked as soldier only. Just as little as it could be suggested 130 years ago to bring before a Court an Admiral of the dictator Napoleon, so just as little can one now condemn an Admiral of the dictator Hitler. Particularly with dictators—and the Prosecution overlooks this—not only the power and the influence of a military commander diminishes but his responsibility must also diminish to the same extent; for the dictator has seized all power and with it all responsibility. All the more so, if a dictator appears with such an extraordinary will and such immense power, as Hitler. The French Prosecutor said in a particularly pertinent way on 7 February 1946 before this Tribunal word for word:

"Hitler was actually the incarnation of all willpower."

The resulting strength and power has been hardly considered by the Prosecution, and, in any case, it has not been taken into consideration at the presentation of the facts and the legal conclusions. How great this power is, Gustave le Bon shows in his famous book "Psychology of the Masses" in the chapter "The Leader of the Masses." I quote from it:

"Within the class of leaders a somewhat strict division can be made. The energetic people with strong wills, but without perseverance belong to the one kind; the people with a strong, persevering will belong to the other kind, which is much rarer * * *. The second class of leaders, those with a persevering will, exercises a much more important influence, in spite of its less brilliant appearence."

Hitler belongs to this second class of leaders, who, in agreement with this quotation, exercised an immense influence, and who, on the other hand, was unimpressive in his brown uniform.

Gustave le Bon continues:

"The unyielding will, which they possess is an exceedingly rare and powerful attribute which subordinates everything to it. One does not always realize what a strong and persistent will can achieve. Nothing can resist it, neither nature nor Gods nor men."

In view of these words, one must realize that Raeder could not resist also.

Accordingly, only the question remains: can revolt ever be a soldier's duty, an open revolt? This question will be denied by every commander all over the world and likewise by any other men with one exception only, if it is the case of a dictator committing a crime the criminality of which is recognized by the military commander himself. Accordingly, Raeder could be made responsible for a military crime only, but not for a political one, because for the political crime, the dictator himself must answer. Should the Prosecution have come to some other conclusion regarding Raeder it has only occurred—as I have already emphasized in my introduction—because, in their misconception of the actual and juridical pacts, they regarded Raeder as politician and soldier. But he was a soldier only. He lived for the navy alone, for the welfare of the navy for which he also is now prepared to bear all responsibility to the full extent. He has led the navy in a unified manner, and, aided by his officer-corps, has taught them to think decently and to fight morally, to fight up to humanity's expectations of a soldier.

It must not be that, as a result of the deeds of a Hitler and his National-Socialism, the officers and soldiers of this navy be defamed by their highest ranking officer being declared a criminal. From an historic viewpoint Raeder may be guilty, because he, as many others within the country and abroad, did not know or see through Hitler, and did not have the strength to resist the dynamic strength of a Hitler, but an omission is no crime. What Raeder did or left undone in his life was in the belief that he was acting correctly and, that as a conscientious soldier, he had to act in this way. Raeder is highly regarded as an officer who is not a criminal and cannot be a criminal since all his life he has lived honorably and as a Christian. A man who believes in God does not commit crimes, and a soldier who believes in God is not a war criminal.

I therefore beg the Tribunal to acquit completely Grand Admiral Dr. H. C. Erich Raeder regarding all points of the indictments.

2. FINAL PLEA by Erich Raeder

This trial, at the end of the taking of evidence, has had a result beneficial for the German nation yet surprising to the Prosecution. Unshakeable testimony of witnesses has cleared the German people and with it all the persons who are in the same situation to-day as I am of the most serious of all accusations, that it had known of the killing of millions of Jews and other people if it had not even participated in it. The attempt of the Prosecution, who through earlier interrogations had known the truth for a long time, and who nevertheless continued its accusations in the trial brief and during cross-examinations, raising the finger of the preacher of morale, this attempt, repeated again and again, to defame the entire German people has suffered collapse.

The second result of this trial, which is of general and therefore of interest for me, is the fact that it was necessary to confirm as a matter of principle the cleanliness and decent fighting habits of the German navy on the strength of the evidence taken. The German navy stands before this Court and before the world with a banner and a flag which is unstained.

The attempt in the plea of Shawcross to place the submarine warfare on the same level with atrocities can be refuted with the clearest conscience, because after the clear results of the evidence they can not be maintained. In particular, the accusation that the German nation had never had the intention to observe the laws of naval warfare, as Shawcross said (Pages 70, 71), has been completely deprived of its status. The same applies to the fact that it has been proved that the naval command staff and its chief has never shown the attitude of despising international law, but to the contrary, that from the first until the last moment it has made honest endeavors to conduct the modern conduct of a naval war in accordance with the principles of international law and human demands, a basis which was the same as adopted by our opponents.

I regret that the prosecution have tried again and again to defame me and the German navy, as is proved by the submission of its second altered trial brief, which only differs from its first versions in that the number and the severity of the insulting statements have been increased. This fact proves that the Prosecutors themselves felt that the factual accusations were too weak; but it is also my conviction that the British and American Prosecution have rendered a service, a bad service to their own Navies. They lower the esteem of that opponent morally and describe him as inferior against whom the Allied naval arms have conducted a serious, honest, and year-long naval battle. I am convinced that the admiralties of the Allied powers understand me and that they know that they have not fought against a criminal. The only way I can explain to myself this attitude adopted by the Prosecution is by assuming that the representatives of the Prosecution, as I had to find them again and again, had at their disposal only very little judgment regarding the principles of true soldierly conduct and true soldierly leadership, and that, therefore, they hardly seem suited to judge soldierly honor.

I summarize: I have done my duty as a soldier because it was my conviction that this would be the best way for me to serve the German people and the German nation for which I have lived and for which to die I am prepared at every moment. If I have become guilty in any way, then only in this way, that in spite of my purely military position I may not only have been a soldier but, up to a certain point, a politician, something however which, considering my entire career and the tradition of the German Wehrmacht, would not suit me. This, on the other hand, would have been a moral guilt before the German people and it could never at any time brand me a war criminal. This would not be a guilt before the penal courts of humanity; it would have been a guilt before God.

XVI. BALDUR VON SCHIRACH

1. FINAL ARGUMENT by Dr. Fritz Sauter, Defense Counsel

Baldur v. Schirach, who at that time was Reich Youth Leader (Reichsjugendfuehrer) welcomed in 1936 the guests to the Olympic Games in Berlin with the following words:

"Youth throws a bridge across all frontiers and seas!"

"I call to the Youth of the World and through them, to Peace." And Baldur v. Schirach, then Gauleiter of Vienna, said to Hitler in 1940:

"Vienna cannot be conquered with bayonets, but only with music." Those two sayings are characteristic and show what kind of man is this defendant. It is the duty of the defense to examine the evidence produced in this trial for the purpose of ascertaining whether the said Baldur v. Schirach who expressed his political programme by such utterances, really committed those crimes against law and humanity with which he is charged by the Prosecution.

Schirach is the youngest defendant here. He is also, of all the defendants, the one who was by far the youngest on his joining the Party which he did when he was not yet 18. Those facts are perhaps already of some significance for the judging of his case. When still at school, he entered the fold of the rising National Socialism; he was particularly attracted by the Socialist idea which had already in his country school recognized no difference between the sons of fathers of different classes and professions; those boys around Schirach actually saw in the popular movement of the 1920's in Germany the promise of the resurgence of our Fatherland from the aftermath of the last Great War, to a happy future, and fate willed it that as early as 1925 Schirach came into personal contact with Hitler in Weimar, Goethe's old town. Hitler's personality made a fascinating impression on young Schirach, as he himself admitted; the program for the Racial Community (Volksgemeinschaft) which Hitler had evolved at that time met with Schirach's hearty approval, because he thought he saw, reproduced therein, on a full-size scale, that which he had personally experienced in a small way in the comradeship of the country school and in his Youth organization. To him and his comrades Hitler appeared as the man who would open for the younger generation the road into the future, from him this younger generation also got its hope for a possibility to work, its hope for a competency, its hope for a happy life. So the young man became a convinced National Socialist; he became one as a result of the environment in which he had spent his youth, and which offered a soil which was only too fertile for the growth of that ideology ("Weltanschauung") which young Schirach embraced, because at that period he held it to be the right one. This environment of his childhood and a biased reading of political books, which the young man devoured in his hunger for knowledge, made of him, while still an inexperienced youth, also an anti-Semite. It is true that he did not become an anti-Semite in the sense of those fanatics who ended in not recoiling with horror from acts of violence and pogroms, nor in the sense of those fanatics who finally created an Auschwitz and murdered millions of Jews, but of an anti-Semite in that moderate sense, who would merely restrict Jewish influence in the government of the state and in cultural life, but for the rest would leave untouched the freedom and rights of Jewish fellow-citizens, and who never thought of exterminating the Jewish people. At least, that is the picture of Hitler's anti-Semitism which young Schirach drew for himself during those years.

That this was really Schirach's opinion is also substantiated by the declaration which Schirach made here in the morning of 24 May 1946, and in which he described without reservation the crimes committed by Hitler as a spot of shame in our history, as a crime which fills every German with shame; that declaration in which he openly expresses that Auschwitz was bound to be the end of each and every racial policy and anti-Semitism. This declaration came from the deepest spot in the heart of the defendant Schirach; it was the result of the terrible disclosures which these trials have brought him also, and Schirach has given this declaration here before the broadest public, in order to bring back the German youth from a wrong road to the road of justice and tolerance.

Let us now regard the more important accusations which have been raised against Schirach, and the major results which the evidence has shown in the individual points:

1. The defendant Schirach is first of all accused that BEFORE the seizure of power, therefore before the year 1933, he ACTIVELY FURTHERED the National-Socialist Party and the youth-organization linked with it, and that he had thereby contributed that the PARTY could COME INTO POWER; he had been, as is stated in the Trial Brief, a close and subordinate follower of Hitler; he had stood in blind loyalty to Hitler and the latter's National-Socialist world of thinking; and he had, as leader of the student-league, led the students ideologically and politically to National Socialism and won them for it."

All this is not denied by Schirach in any manner: He has done what he is being accused of in this respect; this he confesses openly, and for this he naturally holds himself responsible to-day also. The only thing which he denies for this as also the later time the more emphatically is the accusation that he had participated in a CONSPIRACY. According to Schirach's opinion, the Fuehrer-principle and dictatorship in their character and their theory are absolutely incompatible with the idea of a conspiracy, and a conspiracy appears to him as a logical impossibility if many millions of members are to be included in it, and its existence and aims lie exposed before the country in question as well as the foreign countries. We furthermore know from the results of these trials that Hitler, aside from Bormann and Himmler, did not have any friend, any advisor, with whom he expressed himself as to his plans and aims; he rather drove the Fuehrer-principle to the furthest extremes; he took no cognizance of any advisory meetings and discussions, but reached his decisions solely by himself, without even listening to only the opinion of his closest surroundings; with him there were only orders on his part and unconditional obedience on the other side. That is how the "conspiracy" actually looked and all of us who have lived through these trials would never have considered this most radical increase of the Fuehrer-principle possible, had not ALL defendants and ALL witnesses who know about this, in complete agreement, and without a single exception, shown the same picture to us again and again.

Schirach now is not denying at all that already in his very early years he came completely under the influence of Hitler; that he had placed himself with his whole young personality in the service of this idea; and that at the time, as is stated in the indictment, he was devoted to Hitler with unconditional loyalty.

If this was a crime of young Schirach, a crime which millions of older, more experienced, mature Germans have committed with him, then you as judges may condemn him for this, if our law code furnishes a legal basis for it. This then would be a further disappointment in addition to the many others which he has already experienced for years: Schirach knows to-day that he has given loyal support unto the end to a man who did not deserve this, and he also knows to-day that the ideas for which he was enthusiastic in his young years and for which he sacrificed himself led in practice to aims which he himself had never thought of. But also the Schirach of to-day, cleansed by many experiences, cannot see any criminal act in that activity of his younger years carried out in good faith which he developed for Hitler and the latter's party. Because the Party, at that time, appeared quite legal to young Schirach, Schirach never had any doubt that it also came into power by legal means. The seizure of power by the Party, the appointment of Hitler as Reich Chancellor by Reich President von Hindenburg, and winning the majority of the people through the Party in repeated elections confirmed young Schirach again and again the legality of the movement. If to-day he is to be punished, because he acknowledged this same Hitler as his Fuehrer whom millions of Germans and all states of the world have recognized as legal head of the state, so Schirach could never acknowledge such a decision as being just. In spite of the severe judgment, which he himself has pronounced in this Court

Room about Hitler, he would feel himself as a victim of his POLITICAL CONVICTIONS, if he were to be sentenced because as a young, enthusiastic man he had joined the National-Socialist Party and collaborated in its construction and seizure of power. At the time he did not recognize that as a crime, but from his standpoint he considered it as his patriotic duty.

2. The second, far more important accusation which has been raised against the defendant v. Schirach goes to the effect that he, as Reich Youth Leader in the years 1932–1940, in order to cite the accusation word by word, "poisoned the world of thought of the youth with the Nazi-ideology, and especially trained it for AGGRESSIVE WAR." Schirach has always refuted this claim with all decisiveness, and these claims have not been substantiated either by the results of the evidence.

The law on the Hitler Youth of 1936 described Schirach's task as Reich Youth Leader "to educate the youth outside of the parental home and outside of the school physically, intellectually, and morally for service to the people and to the community of the people in the spirit of National Socialism through the Hitler Youth Movement and its leader, the defendant v. Schirach." This program is being repeated word for word in the enactment decree of 1939, which came out so late because Schirach did not intend to introduce compulsory membership until the movement would practically include the entire German youth on the basis of voluntary membership so that future joining by compulsion would exist on paper only.

The Hitler Youth program as it is formulated by Schirach in his speeches and pamphlets does not contain a single word which would indicate a military education of youth, much less an education for aggressive warfare. But even in practice the education of youth according to Schirach's ideas in no way gives evidence of a military education of German youth for such a purpose. In that respect the point was stressed that the Hitler Youth was organized in various "Battalions and divisions;" that is correct although the designations listed by the prosecution are not correct and although they do not have the least bit in common with military formations. But, in the last analysis, every youth movement the world over will show a classification into smaller or larger units; each of these units naturally needs a name also, and it must also have a responsible leader, and similar to other countries, character of youth education. From his own familiarity with practices in foreign countries Schirach knows that foreign youth organizations in Switzerland as well as in France, in England as well as in America, in Czechoslovakia as well as in Yugoslavia, also have similar classifications and similar insignia, and it never occurred to us so far to make that a reason for considering such foreign youth organizations as military associations.

It was furthermore stressed that formations of the male youth in Germany were also given training in shooting. That is also correct but proves equally little, because the shooting instruction for the Hitler Youth consisted fundamentally and without exception of low-caliber target practice, in other words, using short, light rifles (Flobertstutzen) which are nowhere in the world considered as a military weapon and which are not even mentioned in the enumeration of military weapons in the Versailles Treaty. "Hitler Jugend" in Germany did not possess a single military weapon, no infantry rifles and no machineguns, no motorized airplanes, no cannon, and no tanks. However, if one wants to speak about military training, the training would have to be primarily in military weapons, such as are used in modern warfare. As a matter of fact, and in order to give added importance to his office a certain Dr. Stellrecht, a technical adviser on shooting instruction in the leadership of the Reich Youth attempted, as was established in his cross-examination to ascribe a certain considerable importance to this very branch of youth training in order to make his own office appear particularly important; Schirach, however, was able to show without refutation that for this very reason he developed differences of opinion with this technical adviser and so finally parted from Dr. Stellrecht because he (Schirach) rejected any development which might perhaps have led to a military training of the youth. However, this Dr. Stellrecht also, who was brought forward by the Prosecution as a witness against Schirach, has nevertheless also admitted for his part "that not a single boy in Germany was trained in handling weapons of war" and that "not one boy was given a military weapon." Of further importance for consideration of these questions is the fact that Schirach as a matter of principle refused to permit the youth to be trained by active officers or former officers, because he considered these persons entirely unsuitable to educate the youth in that spirit which he envisioned as the goal of his activity. Moreover, neither Schirach nor any of his closer associates, were officers before the war and the same holds true for the overwhelming majority of the high- or low-ranking HJ leaders subordinate to him.

All these facts are firmly established through the testimony of the defendant Schirach himself and through depositions made by the witnesses Lauterbacher, Gustav Hoepken, and Maria Hoepken during their examination. For a number of years these witnesses were Schirach's closest assistants; they are thoroughly familiar with his views and principles and they have unanimously confirmed that it is entirely out of the question to speak of a military, or even a pre-military, training of the Hitler Jugend.

I have just mentioned, as witness, the name Lauterbacher. The Prosecution, during the course of their cross-examination, made the attempt to doubt the credibility of the witness Lauterbacher.

On 27 April 1946, during his interrogation, the witness was asked about how many people Lauterbacher had hanged publicly and furthermore by putting to him the statement that he had ordered that four or five hundred prisoners from the penitentiary in Hanover should be poisoned or executed by shooting. In this connection the American Prosecutor had submitted seven affidavits under Document USA 874, offered in evidence.

Amongst them there was one by a certain Josef Kramer, who in fact has made the assertion in his affidavit that the witness who appeared here for Schirach, witness Lauterbacher, in his function as Gauleiter at Hanover, had given him the order concerning the murder of the inmates.

During the Court's session of 27 May 1946 I had protested against the use of that affidavit by Kramer and I had shown to you gentlemen a newspaper article, according to which the witness Kramer on 2 May 1946, by a court in the British sector, had been condemned to seven years imprisonment. Several days ago I submitted a report of the Rheinische Zeitung of 6 July 1946 as evidence to show that our witness Lauterbacher in the meantime had been acquitted by the Supreme British Military Court in Hanover.

From that it can be seen that the accusations which at the time the Prosecution made against the credibility of the witness Lauterbacher and at which time they based their statements on the affidavit of Kramer, was not justified.

It has also been repeatedly emphasized in rebuttal that the Hitler Youth wore a uniform. That is correct, but it proves nothing. For the youth organizations of other countries, too, are accustomed to wear a common costume, some sort of a uniform, without anybody for this reason terming them military or semimilitary corporations, and Schirach and several of his associates have informed me that in many democratic countries which certainly do not contemplate war, much less a war of aggression, the male youth is being trained in handling actual military weapons and that every year contests are held in shooting with military rifles.

But why was it that Schirach introduced a uniform for the

Hitler Youth, and indeed not only for the boys but also for the girls? We have heard the answer to this from several witnesses: Schirach saw in the uniform of the boys and in the uniform costume of the girls the "dress of socialism," the "dress of comradeship." The child of the rich industrialist was to wear the same clothes as the child of the miner, the son of the millionaire the same as the son of an unemployed. The uniform of the Hitler Youth was to be as Schirach already wrote in 1934 in his book "The Hitler Youth," "the expression of an attitude, which did not ask for class and property, but only for effort and achievement." The uniform of the Hitler Youth was for Schirach, as expressed further in this same book of his "not the sign of any militarism, but the emblem of the idea of the Hitler Youth, namely, the idea of the classless community," in the spirit of the election slogan which he gave the Youth in 1933: "Through Socialism to the nation." Schirach always remained faithful to this principle. Thus he wrote in the official publication of the Hitler Youth 1937 "The uniform is not the expression of a martial attitude, but the dress of comradeship; it extinguishes class difference and again makes the child of the most insignificant worker socially acceptable today; the young generation in our new Germany must be united in an indissoluble community." Schirach had this comradeship and this socialism in mind when he described in 1934 in his book "The Hitler Youth," how he imagined this socialism: "Socialism does not mean to take the fruits of his work away from someone in order to give everybody something produced by the work of another. Everyone is to work, but everyone is also to harvest the fruits of his work. It is also not to be that one person should get rich, while thousands of others must suffer want because of him. Whoever exploits his work and spoliates the community in order to fill his cash box, is an enemy of the German people."

Schirach has pointed out again and again in his numerous writings, articles, and speeches, which have been collected in the document book and have been submitted to the Tribunal, that he did not desire any "pseudo-military exercise" which would only spoil the joy of the Youth in the movement." The training of the boys in small caliber shooting went hand in hand with the training in all sports activities and complied with the inclination of the male youth which surely favors in *all states* the shooting sport with particular interest. But this training had to be decreased very much in volume and importance in favor of the greater aims which Schirach pursued in the Hitler Youth and about which the examined witnesses give as clear a testimony as the writings and speeches of von Schirach. These aims of the Hitler Youth education are to be explained here briefly, as they have been proven by the presentation of evidence; Schirach is naturally not being charged with these other aims of the Hitler Youth education, but one must consider them nevertheless if one is to obtain a total picture of his activity and of his plans.

Besides the already mentioned education of the youth for comradeship, for socialism in the sense of overcoming class distinction, Schirach had, as he explained here, primarily 4 aims in mind:

First the training in sports of the youth in the most varied types of sports and in connection with it the hygienic care of the youth; this branch of the education of the youth took up a very large part of the training of the Hitler Youth, and if the German youth obtained such unexpectedly great success at the Olympic Games in 1936, it was to a certain degree due to the activity of the leadership of the Hitler Youth in cooperation with the sports leader of the Reich v. Tschammer-Osten.

A further aim was the further professional training and advancement of the working youth and the improvement of the position of adolescents in the youth laws, particularly by prohibition of night-work, by increasing the free time, by granting of paid vacations, by prohibition of child labor, by raising of protected age of adolescents etc., the vocational advance training was promoted so strongly that finally over 1 million boys and girls entered professional competition annually, and from year to year the average performance in each profession rose very considerably.

A third primary aim was the advancement of love of nature, far away from the slums of large cities, during hiking trips and in youth hostels, inns. Thousands of youth homes and youth hostels were built in the course of these years because of Schirach's initiative and, namely, by the own means of the Hitler Youth itself to get the youth out of the large cities with their temptations and vices and return to rural life to show them the beauties of the homeland and also to give a vacation to even the poorest child.

But Schirach dedicated his greatest care to a fourth goal of the education of youth: namely, the understanding with youth of other nations, and this activity especially is a particularly suitable test for the question, whether one can accuse defendant von Schirach to have taken part in the planning of wars of aggression. Schirach has told us here on the witness stand, that again and again, in summer as in winter of every year, foreign youth groups were the guests of the German youth and it is shown by the documents in von Schirach's document book for instance that already in the year 1936, no less than 200,000 foreign youths received overnight lodgings in German youth hostels, vice versa, year after year German youth delegations went abroad, especially to England and France to enable youth to get acquainted and respect one another. Those very endeavors of Schirach's, which would be absolutely incompatible with the intention to prepare wars of aggression, received unlimited recognition before the war abroad as well. In one of the special numbers of the Hitler Youth magazine in "Wille und Macht" (Will and power) of 1937, dedicated to this task of understanding, which was also published in French and which is quoted here only as an example, the French Premier Chautemps declared his willingness, as chief of the French government, to advance the further development of these peaceful meetings. "I wish," he wrote, "that the young men of both nations could live every year side by side by the thousands and in this way learn to know, to understand, and respect each other." And further: "Our two nations know, that an understanding between them would be one of the most valuable factors for world peace; therefore it is the duty of all those, on both sides of the frontier who have a clear view and human feeling to work for the understanding rapprochement of both nations. But no one could do it more sincerely and more enthusiastically than the leaders of our beautiful youth of the French and of the German youth. If they understood it to unite this youth, they would hold in their hands the future of European and human culture." The mayor of Versailles of that time wrote in the same spirit, ending his appeal in the monthly of the Hitler Youth with the words: "The education of youth in this spirit is one of the most important tasks of the politicians of both our countries." The French ambassador Francois Poncet recognized just as heartily Schirach's efforts in the same publication under the title "Youth as a Bridge" and concluded his lengthy article with the words: "French participation enriches German soil. German influence fertilizes French spirit. * * * May this exchange develop further. May also the generations, which will benefit of it at one time, contribute to bring the two halves of Charlemagne's empire closer and to create between them those relations of mutual respect, harmony, and of good comradeship for which both nations are deeply longing, because their instinct tells them that the welfare of European culture depends on it and because they know very exactly, when they look into themselves that they have many more reasons to respect and admire each other than to hate each other."

And Schirach himself answered in the next issue of his monthly publication with an enthusiastic article, under the title: "Salute to France." In it he writes for instance: "The rapprochement of our two people is a European task of such urgent necessity that youth has no time to lose in order to work for its achievement." Then further: "Youth is the best ambassador of the world, it is disinterested, frank, and without the eternal distrust of which diplomats can frequently not be cured because to a certain extent it is their professional disease. However no propagandistic intentions may be hidden behind youth exchange. * * * I consider it now as my task to bring about a conversation between German and French youth, which must not be on the German side composed of nice statements from me, but of many personal conversations of thousands of young Germans with just as many young Frenchmen. * * * One must believe in youth, because it above all, can carry out a true understanding." And at the end Schirach reminds that all higher youth leaders of the German Hitler Youth shortly before expressed their respect in the name of the young generation of Germany to the French unknown soldier by placing a wreath under the Arc de Triomphe, and he concludes with the words: "The dead of the great war died while carrying out their patriotic duty and nobly devoting themselves to the ideal of liberty, but Germans as well as French were always full of respect for the gallant foe. If the dead respected themselves, then the living should try to shake hands. If the returned combat veterans of both nations could become comrades, why should the sons and grandsons not become friends?

These are the words of the same Baldur v. Schirach, whom the prosecution tries to brand as a deliberate partner in a Hitlerian conspiracy for war! The Prosecution wants to make a war criminal out of this untiring prophet of international understanding and of peace who is charged with having militarized youth and prepared it bodily and psychologically for wars of aggression. So far, the Prosecution has not been able to furnish evidence to this effect.

Schirach has written various doctrinal books for youth, which were used against him in the Trial Brief; he has published a quantity of essays on the most varied problems of Youth education; his innumerable speeches, addressed to youth, have been published; his orders and instructions to youth are available in a collected form; it must, however, be concluded that amongst all this which constitutes his utterances not a single item is to be found in which he made instigations in favor of war or preached attacks against other countries. The Prosecution has stated in this very connection that he has referred to Lebensraum in his book "The Hitler Youth" and by so doing adopted as his own an unpleasant slogan of the Hitlerite aggression policy; this claim is however unjustified, for the whole book "The Hitler Youth," does not, any more than every other speech and writing of Schirach, contain this word at all. True, he has referred to "Eastern Space" (Ostraum) in two places in the said book "The Hitler Youth," published in 1936, but he quite obviously did not in any way refer by this term to Polish or Soviet-Russian territories, but to the Eastern provinces of the former German Empire, that is to say, to territories which formerly belonged to Germany but were notoriously very thinly populated and well-suited as settlements for the excess of population.

Nowhere has Schirach at any time up to the outbreak of the second World War expressed the idea that he might wish Germany to conquer foreign territories; neither has he ever uttered the odious slogans of German "Master Race" or "Subhumanity" of other nations; he has, on the contrary, always opined in favor of the preservation of peace with the neighboring Nations and always intervened in favor of the peaceful settlement of any conflicts that cropped up and of inevitable clashes of interests. Had Hitler possessed but a fraction of the love of peace which his Youth Leader preached time and again, then perhaps this war would have been spared us Germans and the whole world.

4. Since the Prosecution could not prove to defendant v. Schirach that he ever served Hitler's war policy before the War, he is now charged with having had various relations with the SS and SA and especially to have drawn his young recruits from the Hitler Youth as well as the SS and SA, as also the Leader Corps (Fuehrerkorps) of the Party. This last fact is correct but proves nothing as to Schirach's attitude toward Hitler's war policy and is equally pointless as regards the question of his participation in a war conspiracy of Hitler's. For if 90 to 95 percent or more of German youth belonged to the Hitler Youth, then it was only natural that the Party as well as its formations should draw their young recruits from year to year and to a growing extent from the Hitler Youth. Practically no other youth was available. If the Prosecution, however, refers to the agreement between the Youth Leadership and the Reichsfuehrung SS dated October 1938 (*2396–PS*) concerning patrol service for the Hitler Youth, it cannot, by any means, draw any inference therefrom, for patrol service in the Hitler Youth was only an institution designed to control and supervise the discipline of the Hitler Youth members when they made a public appearance; this was therefore a kind of corporative police operation carried out by the Hitler Youth against their own members and against them alone. In order, however, to guard against difficulties with the general police, an arrangement by agreement with the Reichsfuehrer SS Himmler was necessary

because the latter was the Chief of the whole Police Organization in Germany and could have made difficulties for the institution of the patrol service. This was the only object of the agreement of October 1936, which in reality had just as little to do with providing new blood for the SS, as with the conduct of and the preparation for war. Moreover, it can clearly be seen how much Schirach resisted any influence the Party might win over the Hitler youth from the fact that in 1938 he protested very sharply against having the education of the Hitler Youth during the last two years, namely from 16 to 18 years, taken over by the SA; he sharply rejected this plan and through a personal visit to Hitler succeeded in having the Fuehrer order in question not carried out in practice. As for his attitude toward the SS, we know from the testimony of the witness Gustav Hoepken that Schirach always feared he was being shadowed and spied upon by the SS in Vienna. He always had an uncomfortable feeling because at the beginning of his activity in Vienna there had been appointed for him for the business of Reichsstatthalter and Reich Defense Commissioner, a permanent representative in the person, of all things, of a higher SS leader (Dr. Delbruegge), who, as Schirach knew, had direct connections with the Reich leader SS, that the same man who proposed to Hitler in 1943 to have Schirach imprisoned for defeatism and to have him placed before the people's court, which meant in practice that by Himmler's urging, Schirach would be hanged. These facts alone already prove what was the real relation between defendant v. Schirach and the SS and it is then comprehensible why Schirach finally refused even the "Protection" by the police force appointed to him and preferred to transfer his personal protection to a unit of the Wehrmacht which did not understand the order of Himmler.

5. The defendant v. Schirach's attitude with reference to the Church question, included in the Indictment, is also in keeping with his portrait as depicted by the details so far given. This issue is, in fact, given a minor part in the Indictment, but turns out nevertheless to be of considerable importance for the judgment of Schirach's human personality.

Schirach himself, as well as his wife, always remained in the bosom of the Church. To the foreign critic this circumstance may perhaps appear an unimportant detail, but we Germans know the amount of pressure exercised upon ranking Party officials precisely in such matters, and how few, in this position, ventured to resist such pressure. Schirach was one of those few. He was that high-ranking Party Leader who constantly and invariably stepped in with extreme severity when he learnt of hostile interference and outrages against the Church on the part of the Hitler Youth. He has indeed been reproached of the fact that various songs were sung by the Hitler Youth, which contained outrageous remarks about religious institutions, but in this respect Schirach could with a good conscience, confirm his oath to the effect that he was to a certain extent unaware of these songs, which is entirely conceivable where an organization of 7 or 8 million members is involved, and moreover that certain songs, now considered objectionable, date back to the Middle Ages and have figured in the Song-book of the "Wandervogel," a former Youth organization which the Prosecution surely does not propose to condemn. Schirach has, however, especially pointed out that in the years 1933–1936, several million youths from an entirely different spiritual environment joined the Hitler Youth, and that in the first revolutionary years, that is, in the period of storm and stress of the movement, it was quite impossible to hear of and prevent outrages of this sort.

Whenever Schirach heard of such things he intervened and repressed abuses of this kind, which naturally represented only excesses on the part of isolated elements and could not commit the Youth organization as a whole.

It is Schirach's conviction that the examination of evidence leaves no doubt as to his conciliatory behavior in the matter of the Church, and to the fact that he strove to establish a proper relation of mutual respect between the Church on the one hand and the 3d Reich, and more especially the Reich Youth Leadership on the other hand, and to observe their respective rights and competence. At his own request, Schirach was invested by the Reich Minister of the Interior with the direction of the Concordat negotiations with the Catholic Church in 1934, because he hoped, by his personal cooperation, to achieve an agreement with the Catholic Church more easily. He has honorably endeavored to find, for the settlement of the Youth question, a formula upon which unanimity with the Catholic Church could be possible. His moderation and good will in this respect were then indeed frankly acknowledged by the representatives of the Catholic Church. But it was all ultimately frustrated by Hitler's opposition, and the complications created, particularly for these negotiations, by the events brought about on the 30 June 1934 by the Roehm putsch.

With the Protestant Church on the other hand, Schirach achieved an agreement with the Reich Bishop Dr. Mueller so that the incorporation of the protestant Youth associations in the Hitler Youth was not achieved by constraint but by mutual agreement, and therefore not by the "breaking up of these associations" by the State or Party as the Prosecution assumes, but upon the initiative of the Ecclesiastical head and in complete agreement with him.

It must be pointed out here that it was always Schirach's policy that on the part of the youth leadership neither then nor later restrictions were imposed on church services for youth. On the contrary, as he himself has testified and as was confirmed by the witness Lauterbacher, Schirach emphatically stated in 1937 that he would leave it to the churches to educate the Youth according to the spirit of their faith and at the same time he ordered that, as a principle, no Hitler Youth duty was to be arranged on Sundays during the time of church services; he gave strict orders to the unit leaders of Hitler Youth that organizational duty was to interfere in no way with Sunday church services. If however in individual cases such interferences occurred anyhow and,—as it was proven in the cross-examination,—religious authorities made complaints about this, then the defendant Schirach can not be blamed for this nor does it alter the good intentions which he had.

Not one single case could be proven when he incited against the church or had made anti-religious statements; on the contrary, at numerous rallies, contained in the von Schirach document book which has been presented to the Tribunal, he not only repeatedly rejected the accusation that the Hitler Youths were enemies of the church or atheists, but he positively always inculcated the leaders and members of the Hitler Youth with the obligation to fulfill their obligation toward God; he would not tolerate anyone in the youth who did not believe in God; every true educator would have to be at the same time an educator for religious feeling, it being the basis for all educational activity; Hitler Youth duties and religious convictions could very well be associated with each other and exist side by side. The Hitler Youth leader was to bring no conflicts of conscience whatsoever to his adherents. Leave from duty was to be granted to Hitler Youth members for religious services, rites, and such.

Whoever gives such instructions to his deputy and repeats them over again can claim that he will not be judged as an enemy of the church and as an enemy of religious life. By the way, it is interesting in this connection, what such a reliable judge as Neville Henderson wrote in his oft-quoted book "Failure of a Mission" about a speech which he heard from the lips of Schirach at the 1937 Reich Party Rally. Henderson, who as ambassador in Berlin, knew intimately the German conditions evidently expected that Baldur v. Schirach would speak against the church at the Reich Party Rally and would influence the youth in the spirit of enmity to the church, as was often heard from the other leaders of the Party. Henderson writes: "On this day it was Schirach's speech which impressed me most, although it was quite short." A part of this speech surprised me, when he, addressing himself to the youth, said: "I do not know whether you are Protestants or Catholics, but I do know that you believe in God," and Henderson added: "Formerly I had the impression that all connections with religion were abolished within the Hitler Youth, but these expositions by Schirach appear to refute my assumption."

How Schirach really did think with regard to religion and in what sense he influenced the youth is proved not only by his declaration of opinion which he expressed incidentally once in his speech to the teachers of the Adolf Hitler Schools at Ordensburg Sonthofen that Christ was the greatest leading personality of the world, but also similarly the small book submitted to you, entitled "Christmas Gift of War Welfare Service"; this book, which was sent to the front in large editions, was dedicated by Schirach to the front soldiers who came forth from the Hitler Youth in 1944, thus at a time when radicalism in all districts of Germany could not be carried too far.

Here also Schirach was an exception: you will find no swastika, no picture of Hitler, nor an SA-song in the book of Reich Leader v. Schirach, but among other things an avowed Christian poem from Schirach's own pen, next a picture of a Madonna, beside it a reproduction of van Gogh who, as is generally known, was strictly prescribed in the 3d Reich. Instead of inflammatory words, we find an exhortation to a Christian way of thinking and a copy of the "Wessebrunner Gebet," the most remarkable prayer in the German language, as everyone knows.

Bormann was enraged when he saw the little book, but Schirach remained firm and refused to withdraw the little book or alter it in any way.

The defendant v. Schirach has now been charged with having once undertaken a hostile action against the Church and with having thereby taken part in the persecution of the Church: From a letter of Minister Lammers of 14 March 1941 (*R–146*) it appears that Schirach proposed to keep confiscated property at the disposal of the districts (Gau), and not to hand it over to the Reich, this case alone is no justification at all for connecting the defendant v. Schirach in some way or other with the persecution of the Church. In the case mentioned by the Prosecution, it does not concern Church property at all, but confiscated property of a Prince Schwarzenberg in his Vienna palace; this affair therefore had nothing to do with the Church; this is also confirmed unequivocally by Minister Lammer's letter of 14 March 1941 (*R–146*), which mentions only a "confiscation of property hostile to the people and the State," whereas Bormann's far reaching personal intention becomes apparent and betrays its hostile tendency toward the Church, when Bormann speaks about "Church properties (Monasterial possessions and so forth)" in his accompanying letter of 20 March 1941 referring to this case. Moreover, the confiscation of Prince Schwarzenberg's property has not been caused, pronounced, nor carried out by Schirach. Schirach had nothing to do with the confiscation as such; Schirach, however, agreeing with the other Gauleiter of the Austrian NSDAP and at their request, personally then applied to Hitler and requested that such confiscated property should not be taken to the Reich and not be used on behalf of the Reich, but that it should remain in Vienna. This proposal was crowned with success. Hitler complied with his request, the result being that, when the confiscation was rescinded later on, the property could be returned to its legitimate owner whereas it would otherwise have been lost to him. By acting thus, Schirach no doubt rendered a service to the Vienna Gau and to that person who was the owner of the seized property. This case therefore cannot be charged to the defendant v. Schirach, on the contrary, it speaks in his favor just as in the other case where, whilst circumventing Bormann, he intervened on behalf of Austrian nuns and as a result obtained that the whole project of confiscating Church and Monastery property was discontinued in one day in the whole of the Reich by a direct order of Hitler.

If, however, the Prosecution intends to reproach the defendant with the fact that the Vienna Authorities, subordinate to him, intended to remove an Adolf Hitler School into the Monastery of Neuburg in 1941 (*3927–PS*), it must on the other hand be pointed out that, even prior to the requisitioning of this monastery, entirely independent of Schirach, the Vienna Police and several Vienna Courts had established the occurrence of considerable criminal offenses in this monastery; furthermore that the confiscation of part of the monastery seemed entirely justified to the defendant Schirach, as the very spacious rooms of this religious establishment were not required for monastery purposes.

It must finally be pointed out that the monastery did not complain to the Reich Minister of the Interior of the decision to confiscate, and therefore recognized the confiscation as just, although it had been expressly informed in the confiscation decree of the possibility of lodging a complaint. Moreover, the confiscated rooms were afterward not used for the establishment of an Adolf Hitler school, but for the purpose of the Museum of Historical Art, thus for no Party establishment, which again testifies to the fact that the confiscation decree had in no way been rescinded through Schirach's hostile attitude toward the Church. For, had it been of importance to Schirach to injure the monastery, it being an Ecclesiastical Institution, he would also have confiscated the rooms used for religious ceremonies. He, however, strictly forbade their confiscation.

After all, when appreciating this case, attention should be paid to the fact that the justification of the Confiscation Decree of 22 February 1941 had one remarkable reservation, the decree restricts itself to justifying the confiscation by the fact that on the one hand Vienna badly needed rooms and on the other the confiscated rooms were superfluous for the purposes of the monastery; not a single word mentions or even suggests that criminal offences had been established in the monastery as mentioned in a Police report of 23 January 1941. If this confiscation had been the result of a hostile attitude to the Church, we could have been sure that somehow or other reference would have been made to these offences for justification of the confiscation. At Schirach's instigation, a monthly rent was paid for it to the clergy who had occupied some of the confiscated rooms for which rent there existed no political obligation whatever.

Defendant v. Schirach's further behavior does not reveal at all a hostile attitude toward the Church, particularly, if one considers, whilst appreciating this behavior, that during these years a Reich Leader was also under strong pressure by the Reich Chancellory and by Bormann and that a considerable amount of courage was necessary to resist this pressure and carry on a policy in opposition to the Berlin policy. The witness Wieshofer of Vienna who had the opportunity of watching Schirach's activities confirmed that Schirach in Vienna also strove to establish correct relations with the Church, that he was always willing to listen to Cardinal Innitzer's complaints, and took severe measures against the excesses of individual members of the Hitler Youth or Hitler Youth Leaders. In Vienna, he thus carried out a policy toward the Church quite different from that which his predecessor had favored, and it is beyond doubt that the Ecclesiastical circles in Vienna and the whole of the Vienna population appreciated Schirach's attitude toward the Church. This is also confirmed by the witness Gustav Hoepken who, by order of Schirach, held regular conferences with a Vienna theologian, Dekan Prof. Ens, to be able to inform the defendant Schirach of the clerical wishes and the differences which had arisen with Ecclesiastical authorities. Schirach could not do anything more in the prevailing political circumstances, as they are described in the Affidavit of Maria

Hoepken, if he did not wish to expose himself to the most serious danger.

6. The Prosecution has connected the defendant with concentration camps, not in the bill of indictment but during the presentation of evidence, and the witness Alois Hoellriegel questioned here, was asked in the witness box, whether Schirach had ever been in Mauthausen concentration camp. To this I should like to remark: The defendant Schirach already mentioned his visit to Mauthausen in his own examination by the American Prosecution before the beginning of the trial; it would, therefore, not have been necessary to have this visit testified to again by the witness Hoellriegel. He visited the Mauthausen concentration camp in the year 1942 not in 1944, as the witness Marsalek erroneously stated; the exact year 1942 has been confirmed by the witness Hoellriegel, and in the same way also by the witness Hoepken and Wieshofer, from whom we heard that neither after 1942, nor at any other time, did Schirach visit concentration camps. The visit to Mauthausen in 1942 cannot charge the defendant Schirach in this sense with having known, approved, and supported all the conditions and atrocities in concentration camps.

In 1942 he saw nothing in Mauthausen which might have indicated such crimes. There still were no gas ovens and such at Mauthausen in 1942. At that time mass executions did not take place as yet at Mauthausen. The statements of the defendant von Schirach concerning his impression of this camp appear to be plausible, on the whole, because through the testimony of numerous witnesses, who have been heard during the course of this trial, it has been confirmed again and again that on the occasion of such official visits, which had been announced previously, everything was carefully prepared in order to show to the visitors only that which did not fear the light of day. Mistreatments and tortures were concealed during such official visits in the same manner as arbitrary executions or cruel experiments. This was the case at Mauthausen in 1942 and also at Dachau in 1935, where Schirach and the other visitors were shown only orderly conditions. Conditions which at a superficial glance appeared to be almost better than in some ordinary prisons. As a result, Schirach only knew that since 1933 there were several concentration camps in which, in his opinion, incorrigible habitual criminals were confined. However even to-day, Schirach still cannot believe that the mere knowledge of the existence of concentration camps in itself is already a crime, since he at no time had done anything whatsoever to promote concentration camps, never has expressed his approval of this arrangement, never has sent anybody to a concentration camp, and since he also would never have been able to make any changes in this institution or to prevent the existence of concentration camps. Schirach's influence was always too small for that. To begin with, as Reich Youth Leader he of course had nothing to do with concentration camps, and it was lucky for Schirach that in his entire Vienna district there was not a single concentration camp.

His entire relations with concentration camps were therefore limited, to attempt again and again to have people released from the concentration camps, and it is significant, after all, that he used his presence in the concentration camp Mauthausen—the one and only time he was there—to use his influence for Viennese citizens who were imprisoned in Mauthausen, and to obtain their release.

6 a. I do not want to go any more into many details which have played a larger or smaller part in the presentation of evidence of the case Schirach. In the interest of saving time I shall not deal more specifically with the alleged connection of Schirach with Rosenberg or Streicher, nor into his alleged collaboration with the program for slave workers about which not even the slightest cooperation of the defendant could be proven, nor into a telephone conversation which allegedly had been made by one of the Viennese officials with a SS - Colonel (SS - Standartenfuehrer) about the compulsory work of the Jews which has been used by the Prosecution.

But I should like to make a short remark about one subject which, particularly in connection with the case of Rosenberg was dealt with. That is, a short explanation concerning the action by which thousands of youngsters in the eastern combat zone were collected and brought partly to Poland and partly to Germany.

That action had as its aim, as far as von Schirach could see from the documents presented here, apparently to bring the youngsters who had been in a zone of operation, that is, immediately behind the front, and wandering around without homes, to bring them together, to lead them into professional training and into professions so that they should be saved from physical and moral neglect. The defendant von Schirach doubts whether that could be viewed as a crime against humanity or as a war crime.

But it is certain that of that affair the defendant von Schirach did not know anything at the time. He was not competent for it at the time. That entire affair was handled by the army group center, together with the Ministry for the Eastern Territories, and it is quite credible that the Eastern Ministry, as well as the army group center, did not approach the Gauleiter of Vienna in order to get his approval of that action, or even to notify him about it.

The only thing which, a considerable time later, came to the knowledge of the defendant von Schirach, and which possibly has any connection with that action, was an occasional information by the Reich Youth Leader Axmann that so and so many thousand youngsters were brought to the Junkers works at Dessau as apprentices.

The defendant von Schirach stressed the importance of clearing up this matter because he had been Reich Youth Leader before, and he wants to make it quite clear that also after leaving that office, of course, he would not have done anything against the interests of the Youth.

May I add another remark here concerning the letter which the defendant von Schirach, at the time after the assassination of Heydrich, sent to Reichsleiter Bormann, and in which he has suggested to Bormann reprisal measures in the form of terror attacks against English centers of culture. That letter was actually sent by the defendant to Bormann. He stands for it. I have to point out at the very beginning that fortunately the suggestion remained a suggestion, and it was never carried out.

The defendant, however, has told us that at that time he had been strongly under the impression of the assassination then brought against Heydrich, and it had been clear to him that a revolt of the population in Germany would necessarily lead to a catastrophe for the German armies in Russia, and in his capacity as Gauleiter of Vienna he had considered it his duty to undertake something to protect the rear of the German army fighting in Russia. And that explains that letter to Bormann, that teletype to Bormann of the year 1942, Document 3877–PS, which, as I have already pointed out, fortunately remained unsuccessful.

I shall not deal in detail with the Adolf Hitler Schools which were founded by Schirach, nor into the fifth column which somehow was connected with the Hitler Youth, about which nothing definite could be charged to the defendant. I shall no longer dwell either on the repeated attempts of the defendant Schirach and his friend Dr. Colin Ross for peace and neither shall I discuss the merits of the defendant concerning the evacuation of children to the rural areas which took millions of children from bomb endangered districts during the war into more quiet zones and which thus saved their lives and health.

The defendant von Schirach has already talked about all these affairs in detail himself, and I should therefore like to refer to his own statements. I shall discuss only one more problem here, namely, Schirach's position and attitude concerning the Jewish question. Schirach has admitted here on the witness stand that he has been a convinced National Socialist and thus also an anti-Semite from his earliest youth. He has also made clear to us what he understood by anti-Semitism during those years: He thought of the exclusion of the Jews from civil service and of the limitation of Jewish influence in cultural life and perhaps also in economic life up to a certain extent. But that was all which in his opinion should be undertaken against the Jews, and this was in accordance with the suggestion which he had already made as leader of the students' organization for the introduction of a quota. The defendant's decree concerning the treatment of Jewish youth is, for example, also important for his attitude where he expressly orders that the Jewish youth organizations should have the right and the possibility to practice freely within their framework; they were not to be disturbed in their own life. "In the youth (it says there) the Jewish community shall already to-day take that secluded and in itself unrestrained special position which at some time the entire Jewish community will receive in the German State and in the German economy." Obviously Schirach was not at all thinking about programs, nor about bloody persecution of Jews, and such, he rather believed at that time that the anti-Semitic movement has already reached its aim by the anti-Jewish legislative measures of the years 1933–34; with this he believed the Jewish influence to be removed as far as it seemed unhealthy to him. He was therefore surprised and seriously perplexed when the Nurnberg Laws were issued in 1935 which expressed a complete exclusion of the Jewish population and carried it out with barbaric severity. Schirach has in no way taken part in the planning of these laws; he has nothing whatsoever to do with their content and their formulation.

When he heard on 10 November 1938 about the program against the Jews and about the brutal excesses which were staged by Goebbels and became known throughout the entire youth; we have heard from the witness Lauterbacher, how Schirach reacted to the report of these excesses: He immediately called his assistants together and gave them the strictest orders that the Hitler Youth had to be kept out of such actions under all circumstances. In this sense he also had the officers of the Hitler Youth in all German cities notified by telephone, and he warned every noncommissioned officer that he would hold him personally responsible, if any excesses should occur in the Hitler Youth.

But even after November 1938, Schirach never thought of the possibility that Hitler was thinking about the extermination of the Jews. He rather only heard about it that the Jews should be evacuated from Germany into other states, that they should be transported to Poland, and that they should be settled there at worst in ghettos, but probably in a closed settlement area. When Schirach received in July 1940 Hitler's order to take over the Gau Vienna, Hitler himself also talked to him along the same lines, namely that he would have the Jews brought from Vienna into the General Government; and even to-day Schirach has no doubt that Hitler himself was not thinking about the so-called "final solution" of the Jewish question at that time (1940). We learn from the Hossbach minutes and other evidence of these trials that Hitler was planning the evacuation to Poland already in 1937, but that he decided on the extermination of the Jewish people only in the year 1941 or 1942.

Schirach had nothing to do at all with the evacuation of the Jews from Vienna; the execution of this measure was exclusively in the hands of the Reich Security Main Office (RSHA) and the Vienna office of this agency, and it is known that the Vienna SS Lieutenant (SS-Sturmfuehrer) Dr. Brunner has in the meantime been sentenced to death because of it. The only report which Schirach received and carried out concerning the Viennese Jews was to report to Hitler in 1940, how many Jews there were still left in Vienna, and he gave this report in a latter part of December 1940, where he gave the figure of the Viennese Jews for 1940 as being 60,000. As it is known, Minister Lammers answered this letter by the defendant Schirach with a letter, dated 3 December 1940 (*1950–PS*), which shows with all clarity that it was not Schirach who ordered the evacuation of the Viennese Jews into the General Government, but Hitler himself, and that it was not Schirach, either, who carried out this measure, but the Reichsfuehrer-SS Himmler who delegated his Vienna office with this task. It therefore has to be stated here categorically that Schirach is in no way responsible for the deportation of the Jews from Vienna; he did not execute this action and he did not start it; when he came to Vienna in the summer of 1940 as Gauleiter, the large part of the Viennese Jews had already voluntarily emigrated or had been forcibly evacuated from Vienna, a fact which was also confirmed by the defendant Seyss-Inquart. The remaining 60,000 Jews who were still there at the beginning of Schirach's time in Vienna were deported from there by the SS, without his participation and without his responsibility. In spite of it, Schirach held the well-known Viennese speech of September 1942 (*3046–PS*) in which he stated that every Jew working in Europe was a danger for European culture; Schirach furthermore said in this speech: If one wanted to make reproaches to him now that he had deported 10,000 and more Jews into the Eastern ghetto from this city which had once been the metropolis of Judaism, then he had to answer: "He considers that as an active contribution to European culture." Shirach has openly and courageously admitted that he actually expressed himself in this sense at that time, and he has stated here remorsely: "I cannot take back this wicked word, I must take the responsibility for it, I spoke this word which I sincerely regret."

Should the Tribunal see in these words a legally punishable crime against humanity, Schirach must make atonement for this single anti-Semitic remark which could be proved against him, though they merely remained words and did not result in any harmful aftermath. Schirach's attitude here does not exempt the Tribunal from its duty to verify carefully what Schirach has really done, furthermore under what circumstances he made this remark, and finally whether Schirach had also made any other spiteful remarks against the Jews or committed any malicious actions against Jewry as a whole.

The foremost question is: What has Schirach really done? The reply to it as arising from the results of these proceedings can only be: apart from the fact that he made some isolated anti-Semitic remarks in September 1942, he has not committed any crime against the Jews. He had no competence in the question of the deportation of the Vienna Jews, he did not participate in it at all, and having too little power he could not prevent them altogether. It is just as the Prosecution incidentally stated: He boastfully attributed to himself an action which in reality he had never committed, and in view of his entire attitude could never have done.

What, however prompted Schirach to make this remark? How did he come to attribute an incident to himself and incriminate himself for an activity which he had never committed? The answer is given by the results of the evidence: It demonstrates how very difficult a position Schirach had in Vienna; without giving any reason, Hitler dismissed him as Reich Sport Leader, presumably because he no longer trusted him. From one year to another Hitler's fear was growing that the more youth stood behind Schirach, the more they would be alienated from him (Hitler), the more the black wall of his SS was separating him from his people.

Hitler possibly saw in his Youth Leader the personification of the coming generation who thought in worldwide terms, whose feelings were humane and who felt themselves more and more bound to those perceptions of true morality which Hitler had long ago thrown overboard for himself and his leadership of the nation because they were no longer concepts of true morality but mere slogans of a meaningless propaganda. This feeling might have been a deeper reason for Hitler to dismiss Schirach as Youth Leader suddenly in the summer of 1940, without any word of explanation, and send him to Vienna as Gauleiter, a most difficult position in the city he (Hitler) hated from the bottom of his heart, even whilst he spoke of his "Austrian Fatherland." In Vienna Schirach's position was extremely complicated. Wherever he went he was shadowed and spied upon, his administrative activity there was sharply criticized, he was reproached for not looking after the interests of the Party in Vienna for hardly ever assisting at Party meetings and for not making any public speech. The Berlin Party Chancellery received any complaints the Vienna Party members made about their new Gauleiter with satisfaction and this fact alone might explain the unfortunate speech Schirach made in September 1942, which was diametrically opposed to the attitude he had always maintained to the Jewish question. After the interrogation of the witness Gustav Hoepken, there can be no doubt as to how the Vienna Speech had come about, for it indicates that Schirach had then expressly commissioned his press agent Guenther Kaufmann to emphasize this particular point when telephoning his report of the Vienna speech to the German News Agency, "because he had to make a concession to Bormann in this respect," a point stressed by Schirach himself in the course of his interrogation with the words "out of false loyalty he had morally identified himself with these acts of Hitler and Himmler."

This malicious speech which Schirach made in September 1942 is, however, in another sense a very valuable point in favor of Schirach: in the course thereof Schirach speaks of a "Transfer of the Jews to the Ghetto of the East." Had Schirach known at that time that the Vienna Jews were to be sent away in order to be murdered in an extermination camp, without doubt—in view of the purpose of this speech—he would not have spoken of an Eastern Ghetto to which the Jews had been sent, but he would have reported the extermination of the Vienna Jews; but even at that time, in the fall of 1942, he never had the slightest idea that Hitler wanted to kill the Jews. That he would never have approved of and never accepted, his anti-Semitism had at no time gone so far.

Schirach has also frankly stated here that he had at that time approved of Hitler's plan for a Jewish settlement in Poland, not inspired by anti-Semitism or hatred of the Jews, but by the reasonable consideration that with regard to actual conditions it would have been in the own interests of the Jews to leave Vienna for Poland, because the Jews could not in the long run have been able to stay in Vienna for the duration of the Hitler-regime, but would have always been exposed to serious persecution; as Schirach declared on 24 May 1946 "considering Goebbels' temperament" it always seemed possible that incidents like those of November 1930 could be evoked in one night, and under such conditions of legal unsecurity the existence of the Jewish population in Germany would be unimaginable. He thought that Jewry would be safer in a restricted settlement area of the General Government than in Germany and Austria, where it was exposed to the "whims of the Propaganda Minister," who indeed had been the main supporter of the radical anti-Semitism in Germany. Schirach was well aware of this fact. He could not shut his eyes to the knowledge that the drive against the Jews in Germany daily became obviously more drastic, more fanatic, and so very much more violent.

This conception of the Vienna speech of September 1942 and the true cause of its genesis coincide with the declaration of the defendant Schirach at the meeting of the Town Councillors of Vienna on 6 June 1942 (*3886–PS*), namely, that in the late summer and fall of this year all Jews would be expelled from this city, and likewise with the file note of the Reichsleader Bormann of 2 October 1940 (*USSR 142*), according to which, at a social meeting at Hitler's home, Schirach had remarked that he still had more than 50,000 Jews left in Vienna, which the Governor General of Poland must take over from him. This remark finds its reasoning in Schirach's embarrassing situation at that time; Hitler, on the one hand pressed more and more for the expulsion of the Jews from Vienna, the Governor General Dr. Frank on the other hand strove against the acceptance of the Vienna Jews in the General-Government. This disagreement was evidently the reason for Schirach discussing this fact at the above-mentioned meeting on 2 October 1940 in order to avoid renewed reproaches by the Fuehrer. He, Schirach, personally was not interested in the slightest in the removal of the Vienna Jews, as was proved by the testimony of the witness Gustav Hoepken regarding the discussion between Schirach and Himmler in November 1943. But Hitler demanded it and Himmler insisted on its execution.

The Prosecution has now thought it possible to reproach Schirach with having made another malicious anti-Semitic remark, namely a speech which he supposedly made in late December 1938 at a Student's Meeting at Heidelberg. Across the Neckar

River he pointed to the old University town of Heidelberg, where several burned-out synagogues were the silent witnesses of the anti-Semitic activities of the students of Heidelberg and where the "little stout Reichstudents' leader"—as it is stated literally—is said to have by this incident approved and praised the anti-Jewish pogroms of 9 November 1938 as a heroic act. This accusation is supported by the declaration in lieu of oath of a certain Gregor Ziemer (*2441–PS, USA 679*). However there can be no doubt, that this claim of Ziemer is false. Ziemer never belonged to the student movement or the Hitler Youth, and obviously was not personally present at the student assembly in question; the affidavit does not state from what source he is supposed to have obtained his knowledge; however, that his claim is false is already proven by his description of physical appearance when he speaks of a "little, fat student-leader;" for this does not at all apply to Schirach; perhaps it would to some extent apply to his successor, who was Reich Student Leader at the end of 1938, but it certainly was not Schirach. As is known he had already in 1934 given the office of Reich Student Leader back into the hands of the Fuehrer's deputy, after he himself had in the meantime been appointed Reich Youth Leader. Schirach did not hold a speech at the end of 1938 or at any other time before Heidelberg students, and by the affidavit of the witness Mrs. Maria Hoepken it has been clearly proved, that at the time stated, from 9 November 1938 until the end of the year 1938, Schirach was not in Heidelberg at all. Schirach has also stated this under oath and his own statement can lay claim to credibility because he has not white washed anything for which he was responsible, and he has not wrongfully denied anything, but on the contrary has accounted for all his actions like a man and with love of the truth.

Still another fact decisively confirms that the claim of the Ziemer affidavit is untrue, at any rate in regard to the person of Schirach. In the presentation of evidence it happened to be stated by chance how Schirach reacted to the November-pogroms of the year 1938. The witness Lauterbacher has informed us here, as already mentioned on another occasion, that Schirach on 10 November 1938 had condemned most vehemently the events of 9 November 1938 before his collaborators, and declared that he felt ashamed for the others and the whole party. The 9 November 1938 would go down to German history as a unique German cultural disgrace. "We could not wash ourselves clean of it; Such a thing could have happened with an uncivilized people but it should never have occurred with us Germans who imagine ourselves to be a highly civilized people." The Youth Leader had to prevent such excesses under any circumstances; of his own organization he did not wish to hear anything like it, neither now nor in the future. The Hitler Youth must be kept outside such things under any circumstances. Schirach then had all the offices of the Hitler Youth informed by phone from Berlin in the same sense. If Schirach in November 1938 condemned and disowned in such an extremely sharp manner the events of 9 November 1938, it is impossible for him to have celebrated at about the same time the bloody acts which had been committed and thus have incited the Heidelberg students and the question therefore arises as to why a single participant of that student meeting in Heidelberg was not brought here as a witness, but that the Tribunal was satisfied instead with a witness who could only testify from hearsay. Moreover, the representative of the Prosecution did not revert to this alleged Heidelberg speech during the cross-examination and thereby acknowledged Schirach's own presentation of the facts as correct.

It is also a very significant fact, that the Hitler Youth did neither participate in the excesses of 9 November 1938 nor did they commit any violence of such a kind either before or afterward. The Hitler Youth was then the strongest Party organization; it comprised about 7–8 million members and in spite of that not one single case has been proved where the Hitler Youth participated in such crimes against humanity, although its members were mainly of an age, which according to experience is only too easily tempted to participate in excesses and acts of brutality. The only exception which has been claimed, concerns the testimony of the French woman Ida Vasseau, who is said to have been head of an Old People's Home in Lemberg and who is supposed to have claimed, according to the report of the Commission (USSR 6) "that the Hitler Youth had been given children from the Ghetto in Lemberg whom they used as living targets for their shooting practice." This single exception, however, which has been claimed so far, could not be cleared up in any way, particularly not in the direction of whether members of the Hitler Youth had really been involved. But even if there had been such a single case among the 8 million members during 10 or 15 years, this could not in any way prove that Baldur von Schirach had exercised an inciting influence.

Let us at last examine all the speeches and articles which Schirach wrote as Reich Youth Leader and which are in the possession of the Tribunal in the document book. They extend over a long period of years, yet they do not contain a word inciting to race hatred, preaching hatred of Jews, or exhorting the youth to commit acts of violence or defending such acts. If it has been possible to keep the members of the Hitler Youth, who numbered millions, apart from such excess, it proves the fact that the leaders endeavored to imbue the youth with the spirit of tolerance, love of his neighbor, and respect of human dignity.

How Schirach thought about the treatment of the Jewish question is clearly evident from the scene which occurred in spring 1943 on the Obersalzberg and which is also described in the affidavit of the witness Maria Hoepken. I refer to the scene where Schirach's wife told Hitler in his home how she had witnessed with her own eyes from a hotel-window in Amsterdam, how the Gestapo had deported hundreds of Dutch Jewesses. Schirach himself could not dare at the time to bring such matters to Hitler's attention; a decree of Bormann had expressively prohibited this to the district leaders (Gauleiter). Schirach therefore agreed with his wife that the latter should try to gain an improvement in the treatment of the Jewish question with Hitler. She did not succeed in this; Hitler dismissed Frau von Schirach with the harsh words "these were sentimentalities," and Frau von Schirach did not understand anything about it. Because of this intervention on behalf of the Dutch Jews the situation of the defendant von Schirach had become so critical that he preferred to leave the Obersalzberg immediately in the early morning of the following day, and since that time Hitler was on principle no longer accessible to Schirach.

This intervention of Schirach for a milder treatment of the Jewish question perhaps also contributed to the fact that Hitler, a few months later, in the summer of 1943, seriously considered having Schirach arrested and having him brought before the People's Court for the reason alone that Schirach had dared in a letter to Reichsleiter Bormann to describe the war as a national disaster for Germany.

In any case all this shows that Schirach forcibly stood for moderation in the Jewish question, and that in a manner whereby he endangered his own position and existence. In spite of the fact that he was an anti-Semite,—and it is just because of this that it deserves attention—he withstood all pressure from Berlin and refused to have an anti-Semitic special edition published in the official journal of the Hitler Youth, while he had published his own special editions for an understanding with England and for a more humane treatment of the Eastern nations; it is no less worthy of consideration that Schirach in conjunction with his friend Dr. Colin Ross strove for the emigration of the Jews into the neutral foreign countries in order to save them from being deported to a Polish Ghetto.

7. The prosecution has now endeavored to justify the accusation of a certain share of the defendant von Schirach in the responsibility for the pogroms against Jews which occurred in Poland and Russia, by trying to use against him the so-called "Reports on practice and situation" which were regularly sent in by the SS to the "Commissioner for Defense of the Reich in Military Administrative District XVII" (*3876–PS*). In fact it must be said: If Schirach had at that time had cognizance of these regular "Reports on practice and situation of the operational groups of the Security Police and the Security Service" in the East, then this would indeed entail for him a grave moral and political charge; he could then not be spared the reproach that he must have been aware that, apart from the military operations in the East, horribly cruel mass murders of Communists and Jews had also taken place. The character picture we have had so far of von Schirach, who was also described by the Prosecution as a "cultured man," would be obscured very materially if von Schirach effectively had seen and read these reports. For he would then have known in Latvia and Lithuania, in White Ruthenia and in Kiev, mass murders had taken place, and this quite obviously without any judicial proceedings of any kind and without sentence being passed.

What has, however, been proved by the evidence?

The reports referred to went, as to dozens of others offices, also to that of the "Reich Commissioner in Military Administrative District XVII" and moreover with the express direction "for attention of Government Councillor (Regierungsrat) Dr. Hofmann" or "for attention of Government Councillor (Regierungsrat) Dr. Fischer." From this style of address and from the way in which these reports were initialed at the office of the "Commissioner for Defense of the Reich" it can be established beyond question that Schirach did not have an opportunity of seeing these reports and that he obtained no knowledge of them in any other way either.

Schirach, as is well-known, occupied three extensive offices in Vienna: as Reichsstatthalter and Reich Defense Commissioner he was the chief of the whole State administration, as Lord Mayor he was the head of the Communal administration, and as District Leader (Gauleiter) of Vienna, he was the top of the local Party-machine. It is now only natural that Schirach could not fulfill all these three tasks by himself, especially since in 1940 he had entered a completely different field of tasks, and first had to become accustomed to the work in the state as well as in the communal-administration. He therefore had a permanent deputy for each of his 3 tasks, and this was for the affairs of the state administration, Regierungspresident Dr. Delbruegge. Subject Dr. Delbruegge had to handle the current affairs of the state administration completely on his own; Schirach occupied himself only with matters of the state administration with regard to such matters, which were directed to him by his permanent deputy Dr. Delbruegge in written form or about which Dr. Delbruegge or one of the departmental assistants reported to him orally.

Now, if this had been the case with regard to the aforementioned "Situation and Experience-Reports" ("Lage- und Erfahrungsberichte") then this would have somehow been noted on the documents in question. On the "Experience- and Situation-Reports" submitted there is not a single note however, which shows that this report was submitted to the defendant von Schirach or that he was oriented about it. This can also be understood without further explanation; because after all, the experiences which the police and the SD had accumulated in the partisan-struggles in Poland and Russia were completely inconsequential for the Vienna administration; therefore there was not the least cause to inform the defendant von Schirach in any way who was very much overburdened anyway with administrative matters of all kinds of these reports.

This result not only depends primarily on the testimony under oath of the defendant, but also on that of both witnesses Hoepken and Wieshofer, who as Chief of the "Central Office" and/or as adjutant of the defendant were able to give the most exact information about the Vienna conditions. It is certain that these "Experience and Situation Reports" never came into the distribution of the "Central Office" in Vienna, but only into the distribution of Regierungspraesident Dr. Delbruegge, and that Hoepken as Chief of the Central Office, as well as Wieshofer, as adjutant of the defendant, likewise did not have any previous knowledge of these "Experience and Situation Reports" but came to see them for the first time here in the Court Room during their questioning.

In any case the result is, as has been proven by the file notes which are on the documents, that Schirach did not have any knowledge whatsoever of these reports, that he is not co-responsible for the atrocities described therein, and therefore cannot be criminally charged on account of these activity reports.

8. In order to judge the policy of Schirach, his behavior during the last weeks in Vienna is also not without importance: for Schirach it was only natural not to carry out the various insane orders which came from Berlin then: he has turned the lynching-justice concerning enemy aviators which was ordered by Bormann

far from himself, and likewise the order to hang defeatists without pity, regardless whether they were men or women; his summary court has never even been in session, his summary court has not pronounced a single death sentence, NO BLOOD STICKS TO HIS HANDS. On the contrary, he has done everything, for example, in order to protect enemy aviators who had made an emergency landing from the excited mob, and he has, as we have heard from the witness Wieshofer, for example, immediately sent out his own motor vehicle in order to bring American aviators who had parachuted into safety; thereby he again placed himself in conscious contrast to an order of Bormann, that such aviators were not to be protected from lynching acts of the civilian population. He also did not pay any attention to the order that Vienna was to be defended "to the last man," or that in Vienna, bridges and churches and residential sections were to be destroyed, and he abruptly refused the order to form partisan units in civilian clothing or to continue the hopeless struggle in a criminal manner with the aid of the "Werewolf"; he refused such demands from his sense of duty, especially since this would have caused him to violate international law.

9. The picture of the character of the defendant von Schirach would be incomplete if we did not recall at this moment in addition the declaration which he deposed here in the morning of 24 May 1946. I am speaking of that declaration in which he has described Hitler as a MILLIONFOLD MURDERER, here before the whole German people and before the whole world public. Schirach has already in the past year made declarations which show his feeling of responsibility and his preparedness to answer for his actions and those of his subordinates to the full extent. This was the case on 5 June 1945, for example, when he was hiding in Tyrol, and heard over the radio that all Party leaders were to be brought before an Allied court. Schirach as a result of this reported himself immediately and in his letter to the American local commander stated he was doing this in order to prevent others being made to account for his actions, who had only executed his orders; he surrendered voluntarily, although the English radio had already announced the news of his death, and although Schirach could have hoped to remain in his hiding-place undiscovered. This manner of action deserves consideration in judging the personality of a defendant and in estimating his guilt. The same love of responsibility was then shown by Schirach in the autumn of 1945 as he was heard by the Prosecution: he believed then that his successor Axmann had fallen; in spite of this, Schirach did not attempt to pass his responsibility on to his successor; on the con-

trary, he expressly stated that he assumed full responsibility also for the time of his successor, as well as for what had been done under his successor in the Reich Youth Leadership. The keystone in this line is now fashioned by the statement which Schirach made here on 24 May 1946 and which went out of this room into the wide world, into all the German lands up to the last farm, up to the last workman's hovel.

Any man may err, he may even make mistakes that he later may not himself understand; Schirach also has erred; he has brought up the youth for a man whom he for many years held as unimpeachable and whom he must now brand as a diabolical criminal; in his idealism and out of loyalty he remained faithful and true to his oath to a man who deceived and cheated him and the German youth and who, as we learned here from Speer, up to his last breath placed his own interests higher than the existence and the happiness of 80 million people.

Schirach is perhaps the one defendant who not only clearly realized his mistakes, which you may judge whichever way you like, but who confessed them most honestly and who through his plain speaking prevented creation of a legend in the future. Such a defendant must be given the benefit of his trying to repair as far as lies within his possibilities the damage which in good faith he has caused.

Schirach has tried to do that: he took pains to open the eyes of our people about the "Fuehrer," in whom, together with millions of Germans he saw, through many years, the deliverer of the Fatherland and the guarantor of its future. The former leader of the Reich youth wanted before anything else to tell the German Youth openly that so far, quite unknowingly and with the best intentions, he had led them astray, and that now they must take another direction, if the German people and the German culture were not to perish. In this, Schirach did not think of himself; he was thinking of the youth of to-day, which not only is facing the ruins of our cities and dwellings, but is also wandering about among the wreckage of its former ideals; he was thinking of the German youth, which is in dire need of a new orientation and which must base its future existence on another foundation. Schirach hopes that the entire German youth has heard his words. What was particularly valuable in his confession of 24 May 1946 was his assurance that he alone bore the guilt for the young people, just as he formerly bore the command over them. If this point of view is acknowledged as being right, and if the necessary conclusions are drawn therefrom, the result would be for our German youth a valuable outcome of these trials.

My time is getting short; therefore I wish to come to the end of my considerations of the case of Baldur von Schirach.

You are the highest tribunal of our times; the power of the whole world stands back of you; you represent the four mightiest nations on earth; hundreds of millions of men, not only in the defeated countries, but also in the victorious nations listen to your opinions and anxiously await your judgment.

This high authority gives you the possibility of doing much good through your verdict and its foundations in order that out of to-day's disaster the way to a better future may be found for the benefit of your own people and for the blessing of the German people.

To-day Germany lies on the ground, a poor people, the poorest of all: the German cities are destroyed; the German industry is smashed to pieces; on the shoulders of the German people rests a national debt representing many times the whole national wealth and which means want and poverty, hunger and slavery for many generations of the German people if your people do not help us.

The argument supporting your verdict will in many respects point the way for the help needed to emerge from this desperate plight.

For reasons of sentiment, it may be hard for you to consider this idea and to take it into account, when you think of the misfortune which the past six years also brought to your own countries. It becomes doubly hard, because for months these Court proceedings revealed nothing but crimes committed for a great number of years by a tyrant with the misuse of Germans and in the name of this same German people of whose future you as judges are now asked to think. Hitler is dead, with him his tools who in these years committed crimes without number tyrannizing over Germany and nearly all of Europe. The German people on the other hand lives and must be allowed to live if half a universe is not to fall into ruins.

With this trial and during this epoch, the German people is undergoing a very serious operation; it must not bring death; it must bring healing. Your verdict can and must make a contribution in that direction, so that in future the world may not see in every German a criminal but revert again to the concept of Professor Arnold Nash of Chicago University who a few days ago when questioned about the purpose of his present trip to Europe replied: "Every scientist has two fatherlands, his own and Germany."

Do not forget: there always was and there still is to-day another Germany, a Germany that knows industriousness and economy, a

Germany of Goethe and Beethoven, a Germany that knows loyalty and honesty and other good qualities which in past centuries were proverbial for the German character. You may believe us: in this epoch, as Germany regains consciousness after a severe illness, as she proceeds to rebuild a better future from the ruins of an evil past, a future for its youth which has no part in the crimes committed—at this time 70 or 80 million German people are looking to you and are awaiting from you a verdict which will open the way for a reconstruction of German economy, of the German heart, and true freedom.

You are independent judges not bound by a written law, pledged to serve your conscience only, and called by destiny to give to the world a legal order which will preserve for future generations that peace which the past was unable to preserve for them. A well-known democrat of the old Germany said this in a recent article on the Nurnberg Trial: In a monarchist State, justice would be administered in the name of the King; in a Republic, Courts would pronounce their rulings in the name of the people but you, the Nurnberg Tribunal, you should administer justice in the name of humanity.

It is, indeed, a wonderful thought for the Court, an ideal aim, if it could believe that its verdict could realize the commands of humanity and that for all time it could prevent crimes against humanity. But in certain respects this would still remain an unsteady foundation for your verdict. Because ideas on what humanity demands or prohibits in individual cases may vary, depending upon the epoch, the people, the attitude of the party according to which one judges.

I believe you may find a reliable foundation for your verdict when you revert to the phrase already coined by the ancient Romans, the phrase which endured throughout centuries and which certainly will still remain valid in ages to come:

Justitia est fundamentus regnorum. (Justice is the basis of every state.) Pronounce a judgment hailed not only by the victor nations of to-day as the last victory over Germany, but which history also will recognize as just; pronounce your verdict in the name of justice!

2. FINAL PLEA of Baldur von Schirach

On the 24th of May I made a statement here which I answer before God and my conscience and to which I fully stand even to-day at the end of the trial because it was and is in compliance with my honest innermost conviction.

The British Prosecution, in their final statement, pronounced the following sentence: "Schirach spoiled millions of German children so that they became what they really are to-day, the blind instruments of that policy of murder and domination which these men have carried out." If this accusation were justified I would say no word in my defense. This accusation, however, is not justified; it is untrue. Whoever in any way takes into consideration the results of the evidence in this trial and honestly appreciates it can never and under no circumstances raise the accusation against me that I, through my educational work, had spoiled the youth and poisoned their souls. The principles and aims which I set for the youth and which were accepted for the community built up by the youth with their own powers under my leadership were the following: Self-sacrificing love for the Fatherland, the overcoming of snobbery and class hatred, the planned taking care of health, training by means of walks, games, and sports, cooperation in professional training, and particularly a comradely understanding of the youth of foreign countries. These principles and aims were mine since my own youth and I consider them to be the ideals of a national German education. Those principles and aims were not dictated to me by the Party or the State, and if Hitler were present here to-day, then it would be completely irrelevant for my defense, because as the leader of youth in the Reich I do not rest upon him but upon myself.

These principles of education, however, which in all my speeches, writings, and instructions have been proved a thousandfold and to which I have been faithful as the leader of German youth, are, according to my firm conviction, principles of every leader of youth in this world if he is conscious of his duty toward the people and youth. The activities of our youth and its moral attitude has proved me right and has proved that they have never been spoiled and were not spoiled through me either. German youth was and is industrious, decent, honest, and full of idealism. In peace it honestly contributed toward the education and in war it did its duty bravely to the limit, its duty toward our nation and our German people.

In this hour when I can speak to the Military Tribunal of the four victorious powers for the last time, I want to testify on behalf of our German youth, and with a clear conscience, that it is innocent regarding the atrocities of the Hitler regime unveiled during this trial, that it never wanted this war, and that neither in peace nor in war it participated in any crimes. As the leader of German youth of long standing, I know the development, the inner attitude, and the conduct of our young generation. Who could know it better than I? This youth always gave me the greatest pleasure. In their midst I was always happy and at all times I have been proud of them.

I know that in the years when I was the leader of German youth and in spite of the fact that their membership counted millions, youth, as a matter of principle and without exception, has remained removed from any actions of which it might have to be ashamed to-day. It knew nothing of the numerous cruelties which have been committed by Germans, and just as it knew of no wrongs, it has not desired any wrong. It must not be overlooked that even during the strongest embitterment of its days after a war nobody could expect to accuse the organization of German youth and its leaders of being criminal. Unselfish comradeship in a youth movement which showed the greatest love for the poorest children of the people, faith to the homeland, pleasure in outdoor life, and honest understanding of the youths of foreign peoples, that was the aim of our youth and those were the contents of its education from the first to the last day of my time as Reich youth leader. This youth truly does not deserve the serious fate which has come upon it.

My personal fate is of no importance, but the youth is the hope of our nation. And if in this last moment I may make a request, then it is this:

Will you, as judges, help so that the distorted picture will be removed which the world may have of the German youth to-day and which could not stand up under historical investigation. Will you tell the world in your findings that the distorted writings of a Gregor Ziemer used by the Prosecution contain nothing but the evil slander of a man who transfers his hatred against everything German to the German youth also. Will you, as judges, help also that the youth organizations of your peoples will once again take up the work together with the German youth where, in 1939, without the guilt of the young generation, it has been interrupted.

With a grateful heart our youth has listened to the words of Lord Beveridge who farseeingly and with passion, spoke for having German youth declared free of guilt. With great joy it will grasp the hand stretched out toward it across ruins and debris.

Will you, gentlemen of the Tribunal, contribute with your judgment to create an atmosphere of joint respect for German youth, an atmosphere which is free of hatred and free of revenge.

That is my last request, made with all my heart on behalf of our German youth!

XVII. FRITZ SAUCKEL

1. FINAL ARGUMENT by Dr. Robert Servatius, Defense Counsel

May it please the Tribunal:

The defense of the defendant Sauckel has, in the first place, to deal with the charge of "slave labor".

What is slave labor?

One cannot accept this as an established concept comprehending all the occurrences with which the defendant Sauckel is, in a bewildering abundance, charged under the heading slave labor.

Those actions, particularly, ought first to be examined from a juridical point of view. The legal basis for this examination is the Charter.

However, this Charter does not say what is to be understood by "slave labor" and what by "deportation." Therefore, these concepts should be clarified by interpretation. Article 6 of the Charter speaks, in two passages and from two different points of view, of "deportation" and of "slave labor". Deportation is called both a war crime and a crime against humanity, and forced labor appears as well as "slave labor" under the heading of war crimes and as "enslaving" under the heading of crimes against humanity.

The question, under what heading the deployment of labor (Arbeitseinsatz) of the defendant Sauckel should fall is of decisive importance; if it is a war crime, then it should be judged exclusively by martial law. If it is a crime against humanity, then the latter presupposes the commission of a war crime or of a crime against peace.

It follows thereof that deportation mentioned in Article 6(b) cannot be the same thing as deportation according to Article 6(c) nor can forced labor according to Article 6(b) be identical with forced labor of Article 6(c). The difference between the two kinds is to be found in the fact that something contrary to humanity has to be added to the war crimes.

The correctness of this interpretation may also be recognized in the terminology of the Charter, however fluctuating it may be. For instance, the Russian text for deportation as a war crime chooses the word "uvod", which only means removal from a place, while on the other hand it uses, for crimes against humanity of the same kind, the technical expression "ssylka" under which penal deportation under the rule of the czars is understood as identical in sense with deportation as penal deportation.

One can deduce therefrom that simple removal from occupied territory for labor purposes is only to be considered as a war crime, but that removal becomes a crime against humanity when it assumes the penal character of a transportation of prisoners. Yet the question arises whether, beyond this, according to the Charter, any removal of the population is punishable as a war crime, without considering whether it occurs for deployment of labor or for other reasons. According to the text of the Charter, the latter seems at first sight to be the case, as it renders punishable "removal for slave labor, or for any other purpose." Upon closer examination, however, it becomes evident that this rule does not seem to be meant in such a sense, as there are cases in which a removal is not only consistent with international law but even becomes imperative.

Accordingly, the Charter should only be understood to mean that the prerequisite of the punishable is not just plain "removal" but the composite concept "removal for slave labor" and "removal for any other purpose".

The clause "or for any other purpose" should be understood so as to mean only that an illegal purpose corresponding to slave labor exists. If removal of any kind was to be made punishable, then the qualifying addition "for slave labor or for any other purpose" would be contradictory to common sense.

This identification is important for the defendant Sauckel, as otherwise the existence of deportation classified as a war crime would be evident from the acts admitted by him. Just as for the various kinds of deportation, the difference between the kinds of slave labor according to the Charter should be clarified. Here too a clue for the interpretation is given by the terminology of the different linguistic versions of the text, but not because of their clarity and consistency, but by their very opposite.

The English version speaks of "slave labor" as a war crime and of "enslavement" as a crime against humanity; the French version states "travaux forces" and "reduction en esclavage"; the Russian version accordingly "rabstvo" (-slavery) and "poraboschtschenie" (-enslavement). It is not discernible how the chosen terms differentiate in re.

Starting from the fact that labor inconsistent with humanity must be carried out under more severe conditions than other labor, and considering that "slave labor" appears to be the severest form of labor conditions, one sees that no definition can be derived from this terminology of the Charter, rather that an ethical valuation and stigmatization of the incident is intended.

Accordingly, an objective division of the kinds of labor should be carried out, independent of the terminology, by considering exclusively the degree of severity of labor conditions. If one tries to analyze the terminology used, one finds the designation "enslavement", "esclavage", and "poraboschtschnie" for the inhuman form of labor, whereas the labor not inconsistent with humanity is called "forced labor", "travaux forces", and "prinudidjenaja rabota". Slave labor (Slave labor, travaux forces, and rabstvo) consequently is the general term comprehending both kinds.

What does this verification mean for the defense of the defendant Sauckel? The defendant Sauckel admits having negotiated the "forced labor" in the form of compulsory labor which, as stated before, is being termed by "slave labor" in general. He denies, however, having demanded slave labor, which could have been considered as inhuman labor, i.e., enslavement. A different standard applies here, just as for deportation, to the facts of these two cases; "compulsory labor" is but a war crime and is to be judged according to rules of war; the crime against humanity has, as already stated above for the deportation as crimes against humanity, the additional features of connection with war crimes or crimes against Peace.

If it can be proved that the mobilization of manpower, as ordered by the defendant Sauckel, was permitted by the rules of war, then the same act cannot be held to be a crime against humanity.

The indictment too has made a difference as to the kinds of labor. It has treated, under paragraph 3, Chapter VIII H, as a separate war crime under the title of "Conscription of civilian labor", the mobilization of manpower directed by the defendant Sauckel, which I shall call "regulated labor conscription", "geordneten Arbeitseinsatz" and speaks here only of "forced labor"; the French version speaks here of "travaux forces" and uses terms such as "les obligerent a travailler" and "mis en obligation"; the Russian version follows this and also speaks only of "enforced labor" as "prinuditjelenaja rabota", but not of this being slave labor.

The defendant Sauckel does not deny the facts taken here as a basis, but I shall submit the legal reasons which justify this mobilization of labor and I shall prove that it does not involve any war crime inconsistent with international law.

The rules of international law are authoritative when considering the question whether "regulated labor conscription" is a war crime. The Charter cannot prohibit what international law permits in wartime. Such international law is laid down in the agreements on rules of war and in the general legal principles and usages as they are applied by the States.

The Prosecution, when judging the labor conscription as a war crime, bases it on the definitions of the Hague Convention on Land Warfare, as well as on the agreements and rules of war and the criminal codes of the countries concerned. If it is shown that the labor conscription is permitted by international law, then a judicial inquiry into the penal regulations is, of course, not necessary. The Hague Convention on Land Warfare can be considered as basis for the law of warfare with which we are concerned here. Whether it was recognized by all states involved here is of practically little importance as, inasmuch as it was not recognized or cannot be directly applied, there is a gap in the international law which is closed in accordance with the principles of necessity for belligerent and with the duty for staying within the boundaries of humanity. The principles of international law as established in the Hague Convention on Land Warfare are in all cases an important guidance.

The Prosecution quotes in the first place Article 46 of the Hague Convention on Land Warfare which is to safeguard the fundamental rights of the population. It is typical of forced labor that it restricts liberty, but it is exactly this basic right which is not protected by this article.

If the Hague Convention on Land Warfare is examined for a definite rule concerning deportation and forced labor it will be realized that there is no such regulation. Just as in the sphere of air warfare and the use of new weapons, the Hague Convention on Land Warfare could not deal with questions, which at the time of its drafting were far from the mind of the contracting parties. The first world war was still fought between 2 armies with already prepared material and the fight should be ended after it was used up. The idea of a long war which was a war of material and which required a continuous production with all available labor was for the Hague Convention on Land Warfare no problem to be discussed.

Article 52 of the Hague Convention on Land Warfare which deals with the principle of the right for requisition touches on the matter under discussion, but it can be seen that the rules deal only with the merely local requirements of the army which appears to be equipped and which has only additional local requirements.

It is characteristic, for the purely local meaning, that the authority for requisitions is entrusted to the local commanders in contrast to Article 51 of the Hague Convention on Land Warfare which permits only an independent commanding general to impose compulsory contributions. The literature about the right for requisition in international law quotes accordingly only examples of local significance.

Although Article 52 of the Hague Convention on Land Warfare can accordingly not be directly applied, its basic principles are nevertheless binding on the belligerents.

The basic idea is that the army can demand practically everything that is necessary for the satisfaction of their requirements. There are only two limitations, it can not take more than it needs, and not more than is compatible with the resources of the country.

The idea of the local duty for supply "oertlichen Leistungspflicht" is to adapt to modern warfare. The Hague Convention on Land Warfare thought of the use of smiths and wheelwrights which were necessary for the maintenance of the equipment of the army; work inside the country of the occupying power was, with regard to the undeveloped transportation conditions, out of the question and could not be considered.

Today, the necessary work cannot be done any more near the front lines but must be done in the belligerents' own countries. It must therefore be possible to demand labor only where it can be done and where it is necessary. It must be possible to demand this work also for the new war requirements of mass production for the current replacements.

What is necessary at any given time can be demanded and the amount depends on the respective conditions. If in earlier times, according to the principle, "the war supplies the war," the equipping of the army, detached from the homeland with regard to transportation, was also done on a large scale in the occupied territory, it must be possible today to supply the army by moving the workers to the factories in the country of the belligerent. The evolution of the law of warfare is influenced by the requirements to which this law has to serve.

With the basic idea of the duty for supply, the basic idea of the limitation has to be accepted. These limitations must also be interpreted in accordance with the changed conditions.

If the duty for supply is justified, no more work can be demanded than the occupying power demands from its own people at home. The intensity of the war as total war must be taken in consideration. The duty for supply may hereby become very large.

The meaning and the purpose of the Hague Convention on Land Warfare are certainly not to place the nationals of a defeated state in a better position than those of the victorious state which occupies the country. This, however, would be the result if the Hague Convention on Land Warfare would be interpreted according to its original wording. If this is claimed, France which had unconditionally capitulated, as well as the other occupied countries, could have looked on in security how Germany, strangled by the blockade, exhausted herself in an indefatigable struggle in sacrifices of life and property. Can one really demand that the prisoners in a besieged fortress lives better than the defender of the fortress? If Germany could live today according to the idyll of the Hague Convention on Land Warfare, this would be preferable to the burden of the peace treaty to be expected.

Actually the Hague Convention on Land Warfare has not been adhered to in its original interpretation, if it is true that already, before the conclusion of the armistice agreement, the Soviet Union as occupying power transferred the population on a large scale from the eastern parts of Germany for work outside Germany. The Tribunal could obtain official information about this through an inquiry with the Control Council. Also I have information that German civilian internees are used for work in France today. Here too the Tribunal could obtain official information.

The second limitation of the duty for work is embodied in the rule that no participation in war enterprises against the fatherland of the worker can be demanded. Any work for the occupying power benefits indirectly its war effort; the prohibition is therefore restricted on direct participation in "operations" of the fighting force. The literature on international law contrasts the participation in military operations with the permissible participation in preparations.

A participation in war operations in this sense was asked of no worker; rather the purpose was to keep workers employed unmolested, away from these operations.

Consequently, only such activity as is directed against one's own country is forbidden. Thus, the feeling of the individual is to be taken into consideration. The protection of the enemy state is not aimed at. Wherever therefore the individual renounces his country and, in the struggle of ideologies, opposes the government of his country, such a restriction cannot be kept up. In connection with this it is pointed to the great amount of foreigners who adopted such an attitude and who, in part, still live in Germany today.

The same applies when the state, to which the worker belongs, has ceased fighting. This question is of special importance with regard to the obligation to work in the armament industry. The rules of the Geneva Convention, with regard to work permissible for prisoners of war, are known. The basic notion, that no one may be forced to make weapons against his own brother, must apply to civilian workers also.

The fact, however, that one's country is no longer in a state of war is one of the reasons that nullify this restriction. The need for protection also ceases to exist when a country—though legally participating in war—no longer is able to furnish proper resistance in the field with fighting forces and thus ceases to exist as a military object of attack.

The fact that this very country has allies, who fight for it, cannot arbitrarily extend this restriction beyond agreements of the Geneva Convention; it also is not the duty of a subject of a State to protect allies fighting for him and to participate in the policies of his government.

Puppet Governments cannot change reality. Recognition cannot be granted to them unless they come forward as independent fighters under command of their own and if they are recognized as such.

These aspects apply to all States defeated by Germany.

At the time of the mobilization of labor only England, the United States, and the Soviet-Union were active combatants against Germany. Englishmen and Americans were not subjected to this mobilization, although citizens of the Soviet Union were in part used in the armament production. The legal position of citizens of the Soviet Union is however fundamentally different.

Under Document EC–338, USSR 356 the Prosecution submitted a decision of the peoples commissars of 1 June 1941 (Beschluss der Volkskommissare). This decree involves the utilization for labor of prisoners of war; it deals however also with the employment of interned civilians. According to it, armament production is not forbidden for both forms of labor. However, two restrictions are provided for in the decree, namely, work in the combat zone and such work as might be done by an orderly.

Reciprocally speaking, no objection can be raised against the employment of Soviet citizens in armament production. During examination before the Tribunal, the witness, General Paulus, confirmed that prisoners of war were employed in factories of the Soviet Union and that in a state with a directed economy they will be employed in the armament industry only, for the duration of the war. According to the decree it must be assumed that these workers were employed in the armament production also.

The significance of such a violation of the principle of forbidding armament production lies in the grave consequence that the formulation of a generally recognized rule of the international law in the modern field of utilization of manpower cannot be proven. Under these circumstances, therefore, Germany was likewise free to employ workers of the Soviet Union and workers of all other states in the armament production.

If on one hand the Hague Convention on Land Warfare does not oppose regulated utilization of manpower, then there remain further international aspects permitting such a utilization of manpower. The permission of the Government of the occupied state is of primary consideration. This permission has been given by France.

The objection that Marshal Petain's Government was not a constitutional Government is invalid, for it was the legitimate successor to the provisionary armistice Government. That it represented the French State to all foreign governments is of decisive consideration in international relations. This authority of representation was confirmed by the United States, by her maintenance of an Ambassador in Vichy, even after her own entry into the war. Great Britain also agreed upon terms of an armistice with a general of the Vichy Government in Syria in 1941. This government once recognized could not lose its lawful position by the simple declaration of an opposing government even though this opposing government might have been recognized by the Allies. A government loses its international position only if it is forced to transfer its actual power to the opposing government. Up to such a moment it remains authority inside its sphere of influence.

The other objection that the Government of Marshal Petain was not free to deal as it wanted and that consequently agreements with Germany in the field of utilization of manpower were reached by coercive measures and therefore invalid, is not justified from the point of view of international law.

Negotiations for armistice and peace treaties are always conducted under great pressure. That this does not infringe upon the validity of such treaties cannot be denied from the point of view of international law. This has constantly been emphasized when refusing German demands for a revision of the Treaty of Versailles.

Agreements which are reached in periods between the armistice and peace treaty are subject to the same conditions. This also applies to the agreement with France with respect to the utilization of manpower. Thus, if—contrary to the statement of the defendant Sauckel—negotiations about the utilization of manpower were conducted in the form of an ultimatum, there could, from the point of view of international law, still be no reason for an objection. Besides, Sauckel's influence surely could not have been so great that he could have exerted an excessive amount of pressure.

The validity of such agreements can only be doubted under very special conditions, that is, when unusual duties have to be performed which obviously violate principles of humanity; for instance, if the agreements contain a liability to work under slavery conditions. The motive for these agreements was, however, to offer especially to the French workers favorable working conditions and salaries for their obligatory labor in Germany, and so to gain the willingness of the workers.

Military reasons too can command the evacuation of an occupied territory by parts of the population and therefore the shifting of manpower. This happens when the population participates in battle of partisans or resistance groups and so endanger security instead of behaving themselves peacefully according to their duty to obedience.

Also to eliminate this support it is already sufficient if the population in the so-called partisan territories is being enlisted even against its will. That such conditions were organized by Germany's enemies in an increasing manner first in the East and later in the West, are looked upon today as patriotic achievements. In view of this one must not forget that the herewith connected shifting of workers was exactly the consequence of their action and that these actions were permitted by international law.

Evacuation had to be carried out in the interest of security and assignment of labor elsewhere already was necessary to uphold order. It is the right of the occupying power to utilize this labor in a regulated state economy as seems most practical in the prevailing conditions.

Similar measures could also take place in areas of retreat after it was ascertained that the male population illegally took part in battle during the retreat when it was summoned by the enemy and sometimes even supplied with weapons.

Evacuation measures for the security of combat troops correspond with international law; to engage evacuated persons in new work is not only legal but also the duty of the occupation administration. The state which summons its members to fight and thereby intensifies the battle is guilty of such an evacuation. The necessary retaliations therefore must be legal.

If such evacuations are necessary, then they must be carried out without undue suffering for the population. Thereto advance measures are necessary which alone can avoid these hardships. This is the duty of the administration "Verwaltungspflicht", as confirmed in Article 43 of Hague Convention on Land Warfare.

Hereto appertain the proposals made by Sauckel for the evacuation of territories of retreat in France in the case of the invasion

(1289–PS). These proposals were not materialized and can therefore not incriminate the defendant Sauckel.

This administrative duty can also demand to shift labor in order to avoid unemployment and famine. This, for example, took place when the industrial areas of the Soviet Union were occupied and there were no more working possibilities and securing of supply after the population was unemployed because of the scorched earth policy chosen by the Soviet Union, and supply failed to arrive because of transport difficulties.

These military and administrative points of view of the international law can invalidate a number of reproaches, but they do not answer the basic question, namely, whether the enlistment of workers is also permitted outside the Hague Convention of Land Warfare, especially for the purpose of work, i.e., to enable the state to carry on the war through increase of production and thus release its own workers for front duty. A purely military emergency could give no excuse for disregarding international law. The endangered victory must not be pursued by breaking the law because of necessity, because the law of warfare is supposed to correct just this conflict which is always connected with need.

International law decides to the contrary if a measure is concerned which has to be taken in order to save the existence of the state. This is concerned with a law of self-preservation which every state is entitled to because higher institutions are lacking which could protect it from destruction.

It has repeatedly been stressed by all concerned that in this war our existence was at stake. This became evident for Germany after the ominous battles at the eastern front in the winter 1941 and 1942. Whereas, up to that time, a general employment of foreign labor had not been necessary, now new equipment had to be produced immediately. The number of our own workers, who were drafted for front-service, had to be diminished by 2 million. The employing of unskilled women and young people could not immediately relieve the situation. By later development of the war, especially by the aerial warfare, the armament demands were increased to such an extent that, in spite of the increased employment of women and young people, the level could not be maintained. The means were exhausted.

The official figures the defendant Sauckel made public in his speech in Posen in February 1943 (*1739–PS*) proved that, already in 1939 at the beginning of the second world war, more than twice as many women were employed than at the end of the first world war, and that their number at the end of the second world war had increased by another 2 million, to more than 10 million. This number is higher than the entire number of male and female workers in the armament industry at the end of the first world war. In spite of that there was a shortage of labor. This has been confirmed by the witness Rohland of co-defendant Speer in Document Speer–56, according to which co-defendant Speer also declared that foreign labor was needed under all circumstances.

The difficult part of the problem did not consist in the question of female labor, where by introducing additional home labor one went up to the limit, but in the procuring of specialists and men for hard and hardest labor. Among the 10 million German women who were at work, there were also the wives of officers at the front and others from the equivalent strata of society.

The opinion that in England the women were conscribed to work in a higher degree than in Germany is wrong. In Germany the women had to work till 45 years of age and later till their 50th year, and they actually worked in factories and did not have fake jobs of a social kind. Even the youth of school age was conscribed to work from the 10th year of age, and from the 16th they were switched into the regular work organization or occupied in other services. Families were spread apart. Schools and universities were closed, their pupils worked in the armament industry and even wounded men could not continue their studies. A grim fight was on for every person capable to work. Speer's reserve of workers did not exist. It is shown among others in inclosure 2 of the Wartburg Document (*RF–810*) what efforts were made in this sector.

Another point of view, illustrating the necessity of deploying additional labor, is the fact that the powers in possession of colonies fetched labor from their colonies, e.g., France (*RF–22*), for instance, brought about 50,000 workers from North Africa and Indo-China, which were under the leadership and direction of commissioned and noncommissioned officers. As Germany, because it had been refused colonies and on account of the blockade, could not fall back on these reserves, it had to have the possibility, in its fight for the existence of the state, to take labor there, where it is found to be inactive in occupied territories.

This outlines the basis with regard to international law for judging the regulated utilization of labor as a war crime. One may, with regard to certain points, have a different opinion and specially in international law we find that a common interpretation of law will be formed but with difficulty. The interests of the members of the community of international law play an important part and are not always identical; legal principles are often not recognized, because a state does not want to put itself officially in contradiction with its former actions, or because it would like to keep its hands free for the future.

As counsel for the defense, I am in a position to present an interpretation of law without such inhibitions. The significance of my statement for the defense, apart from the objective side, lies in the fact that defendant Sauckel subjectively was entitled to believe in the lawfulness of a regulated utilization of labor and that for him his behavior did not appear in contradiction with international law. This was helped by the conviction which defendant Sauckel was obliged to gain from the permissibility of the well-ordered utilization of labor by the attitude of the superior offices. When Sauckel entered upon his office, foreign workers had already been enlisted in single actions and he could take it for granted that the State had proceeded legally. None of the highest offices had raised legal objections toward Sauckel. These offices, especially the competent Foreign Office as well as the highest civil and military offices in the occupied territories abroad, accepted his orders as a foregone conclusion and questions of doubt on international law were not raised.

For the opinion of the defendant Sauckel, the attitude of the foreign offices concerned must have been especially decisive, as above all the consent of the French as well as the Belgians who came to Berlin personally for discussions. From that followed the good co-operation with the local authorities in the occupied territories, as it was before the enemy propaganda intervened.

Whether the knowledge of breaking a law is necessary for committing a crime against international law may be left undecided; but to establish guilt, the knowledge of realization of all the criminal facts is necessary in order to pass a punitive sentence. Therefore it is necessary to realize that the action was carried out in violation of international law. The subjective part of facts and therewith a criminal guilt of the defendant Sauckel cannot be proved in regard to carrying out the regulated utilization of labor. A punishment of the defendant Sauckel also could not take place for another legal reason, even though the regulated utilization of manpower would really be a violation of international law. According to the Hague Convention on Land Warfare no individual responsibility exists. The Hague Convention on Land Warfare differentiates two kinds of war crimes, those which can be committed by an individual, such as murder and ill-treatment, and those which can only be committed by a belligerent. The regulated utilization of manpower is a proceeding which can only be initiated by the state. While the individual action is being punished according to the penal code of the individual states, so is a special regulation formulated, for the offense of the belligerent in article 3 in the introductory agreement to the Hague Convention on Land Warfare. According to that there is only an obligation for compensation agreed upon. This agreement of the Hague Convention on Land Warfare is still valid today, for by agreement of the Allies alone, this cannot be annulled. The Charter which orders the immediate criminal responsibility of the state organs or its executors is void as far as it is contradictory to the Hague Convention on Land Warfare. I do not have to refer to it, that Germany as one of the parties to the agreement would have had to agree to the suspension of article 3; there are other reasons which prove that this stipulation is still in force. An alteration of the Hague Convention on Land Warfare in the sense of the Charter could have been accomplished by prescriptive law or general custom, due to the change of legal conceptions. The presupposition to this assumption would be, however, that the contracting powers would have relinquished their sovereignty; as only then the punishment of the state organs would be possible. However such a renunciation of the rights of sovereignty, as far as it is known to me, has not taken place to such an extent, which generally would permit such a punishment. With regard to that, I refer to the general statements made by Professor Jahrreiss before the Tribunal.

The Utilization of Manpower as a Crime Against Humanity

If the regulated utilization of manpower (geordneter Arbeitseinsatz) appears permissible according to international law, the question remains of the method of its execution, namely, the question on how long this utilization of manpower can still be regarded as regulated and when it will go beyond permissible limit.

What is understood by humanity, the Charter does not say. The meaning for that—as far as international law is concerned—can only be seen by the practice of the nations. If one wants to find the limits for the actions permissible under international law, we must draw into comparison the bombing of large cities and the use of the atom bomb, as well as deportations and evacuations, as they are still in progress today. These are all incidents which have occurred before the eyes of the world and were regarded as permissible by the executing countries.

One runs again into the conception of necessity and finds that it is being interpreted very flexible. This should well be kept in mind, if one examines the utilization of labor as to its violation against humanity. Its aim is not the stroke-like killing of hundreds of thousands, however it naturally carries hardships and certainly also mistakes, which arise unintentionally or are due to the failure of individuals. One must answer the question whether the wanted killing does not always weigh heavier than the temporary causing of other sufferings. It is to be added that the Charter does not prescribe a punishment for each violation against humanity, but only then, when the inhuman treatment has been committed in the execution or the connection of a crime, for which the Tribunal is competent.

However the Tribunal is competent only for crimes against peace and war crimes. What concerns the crimes against peace, the defense can be permitted therefore to use the same inhuman treatment, while it is punishable when committed by the aggressor. Or it must be considered a war crime. This is not the case when it deals with the wounding of subjects of its own nationality, for these are not protected by laws of warfare. A prosecution of an act against humanity directed against them can only happen when connected at the same time with a crime against peace.

From an objective point of view, the deployment of labor has furthered the waging of the war which has been stated by the Prosecution as a war of aggression or as a war violating treaties. If this is established and if it is proved moreover that the deployment of labor has been carried out in an inhuman way, then the facts stated by the Charter are implied and a crime against humanity has been committed, without regard to the fact whether the deployment of labor was, as a matter of principle, allowed or not by the rules of war, as it has been committed in connection with a crime against peace. But a punishment can be inflicted only if the culprit knows subjectively that an unlawful war is being waged and if he furthers it by his action. As the defendant Sauckel denies any such knowledge, it must be proved.

The other possibility of committing the acts at issue lies here in that the inhuman act serves the carrying out of a war crime or is connected with it. Of the examples given by the Charter for violation of the rules of war, the following are, above all others, to be quoted in connection with deployment of labor: "Murder, ill treatments and deportation * * * committed on the civilian population." As shown by this enumeration, these war crimes which have been mentioned are not, however serious they may be, crimes against humanity by themselves. Something aggravating which is necessary to give the act the character of inhumanity must be added. As shown by the example of "extermination" and "enslavement" as an inhuman act, the acts in question must be objectively of a particular scale or particularly cruel. Subjectively however, an inhuman disposition of the culprit and the knowledge of the inhumanity of the act, i.e., the knowledge of the scale or the measure of the cruelty of its execution, must be added. How far these presuppositions apply to the defendant Sauckel must be investigated later on. A "regulated labor conscription" (geordneter Arbeitseinsatz) allowed by international law never can be a crime against humanity in itself, but its execution can be carried out in such a way that it involves killings and ill treatments which, for their part, may be war crimes.

Such an ill treatment could be based on the regulation issued by the highest authority involved, which herewith takes responsibility. It can, however, be committed by subordinate offices acting on their own authority without knowledge or intention of the superior authorities. In this case the head of the office which acts autonomously bears the responsibility. Finally, there may be question of a purely individual act committed against the regulations in force. For such an act the acting individual is responsible.

It follows that the defendant Sauckel is responsible, to begin with, for such general orders and instructions only which he has given, but not, on the contrary, for autonomous acts of supreme authorities in the occupied territories or of supreme Reich authorities as Chief of SS and Police, which were not under his jurisdiction.

The orders and directions of the defendant Sauckel have been submitted and they must prove whether the deployment of labor ordered by him was in fact a regulated one or was tantamount to an "ill-treatment" of the population.

The deployment of labor took place, apart from the call for volunteers, on the basis of a service duty "Dienstverpflichtung" which, as a matter of principle, was legally ordered, according to Hitler's orders, by the territorial commanders. The authority to issue such laws transcended the powers of the defendant Sauckel, nor could he ask for the issue of any such laws. But he has approved of them and has made them the basis of his work.

The contents of those laws were consistent with the fundamental ideas of the German laws concerning compulsory labor service. Those laws were enforced by coercion. The use of coercive measures is not necessary as long as the legal authority of the occupying power is acknowledged by the population; they become necessary only when this authority gets lost. In this sense, the defendant Sauckel has repeatedly asked for the maintenance of the so-called executive by enterprises for the sweeping of territories held by partisans and for the overpowering of the resistance movement (*R–124*).

No legal objections can be raised against the fact for this purpose he demanded the use of the thereto appropriated state funds. He is wrongly incriminated only by the words "SS and Police" which has been connected by the Prosecution with the conception of crime. Such an incrimination would only be justified if the criminal character of the police had been proved and if the defendant Sauckel at that time had had cognizance of the criminal activity then taking place.

That force may be used in case of resistance against orders of the occupation force, cannot be disputed. The question is where are the limits of force and whether or not there are legal and illegal, admissible and inadmissible measures of force.

If fundamental laws are not valid when a state of siege is declared within a state, then this thought is all the more applicable to an occupying power during a state of war. Anyone who refuses to carry out the orders of the occupation power knowingly participates in the fight to which he is not entitled and he has to accept the consequences. Obedience is duty towards the occupying power and where patriotism and obedience are conflicting, the law decides against patriotism. The punishments which are dealt out are as such not subject to any limitations and the threats of punishment by an occupation power are, for the effect of intimidation, usually out of all proportion in severity. The question is whether there exists a limit from the humane standpoint, which prohibits going unnecessarily beyond the purpose of the punishment and which, as beyond measure, appears to be unnecessary. Orders like the burning of houses which had been issued by subordinate offices independently in the carrying out of utilization of labor must be examined from this point of view.

This question is not easy to answer, if one considers the special circumstances and realizes that the thing involved here is an open battle between the occupying power and the population, with official support from the enemy. In case of uprisings and general resistance one cannot reject the idea of the applicability of the military laws of the combat troops. Necessity alone can be the decisive factor in this case. International law has put only one limit to coercive measures in forbidding in article 50 of the Hague Convention on Land Warfare collective punishment of an entire population for the deeds of individuals for which the population could not be held responsible. Presupposition hereby is that co-responsibility has been established through actual events and has not been construed through orders.

Wherein collective punishment may consist has not been stated. As limits must be considered the aforementioned: They must be the bounds of humanity; but in war this is a vague conception;

necessity and suitableness of the means to the end must always have the preference.

Next to the way of recruiting labor the conditions of work can represent an ill treatment which can be looked upon as a war crime. On principle there can be no question of ill treatment, in case the foreign workers are treated generally the same way as the workers of the home-country. A different treatment is only permissible in case special circumstances justify it. Whereas this putting on the same basis was in general carried out, the so-called eastern workers (Ostarbeiter) were put on worse conditions.

The most striking item here was the limitation of freedom. If this were arbitrary, it would be sufficient reason for declaring it an ill-treatment. But the reasons for this limitation of freedom were not arbitrary but were the need of security of the state. During wartime the stay of an enemy alien in the state area always represents a danger and it is just for that reason that at first the bringing in of foreign workers had been renounced. It was when the needs demanded the deployment of foreign workers, that the needs of security had to be satisfied simultaneously. What measures are to be taken depends upon the danger, which is different according to the attitude of the alien. Whereas the measures of policing were imperceptible with regard to the French, the eastern workers were, in the beginning, kept locked in camps.

The natural interest of the state goes in the direction of attaining security by winning the aliens over inwardly because their collaboration is desired. By depriving them of their freedom, this is not to be achieved. As long as the attitude of the alien can not be clearly recognized, especially if he be—as the citizen of the Soviet Union is—schooled propagandistically, more severe control may be necessary. But it should not develop into a permanent captivity, and should at most correspond to a sort of quarantine; to deprive people without guilt of their liberty for an extended period is not admissible, because it would correspond to a forbidden collective punishment. The mere assumption of danger is not sufficient for the decreasing of such limitations; there must be besides, acts which show that these foreign workers appear dangerous also under normal working conditions. The keeping in custody of eastern workers behind barbed wire and without permission to go out for walks, as ordered by Himmler, is to be regarded as an ill-treatment, if it is permanent.

The defendant Sauckel, guided by the feeling that in this matter the limits of the permissible had been overstepped, immediately took steps against this and, in a tough fight against Himmler, demanded and obtained the withdrawal of barbed wires and the prohibition to go out for walks, to be seen from the following decrees. (*Doc. Sauckel 10, Exhibit USA 206.*)

Where, in spite of the set regulations, the old methods were applied by the police, Sauckel always intervened when he heard of such occurrences. This has been confirmed repeatedly by witnesses. (*Exhibit Sauckel 10, Witness Goetz.*)

Another controversial point was the earmarking by the badge "OST" which was maintained until the year 1944 and was then replaced by a country insignia. This earmarking of the Eastern workers which could move freely among the population was necessary for police security measures. This cannot be considered an illtreatment. The rejection of this sign by the Eastern workers was based in the first place on the defamation of this badge by propaganda, and the defendant Sauckel has always tried to change this insignia and to replace it by a nationality insignia as the other workers wore it voluntarily. He finally prevailed here also against Himmler (*Doc. RF–810*).

There must on principle also be equality between own and foreign workers with regard to the rules concerning maintenance of discipline.

With all belligerent states the war has raised the same problem as how to deal with such workers who do not live up to their duty of work, that means slackers, shirkers, and saboteurs. The practice of discharge, common in peacetime, is ineffective during war; but deserters from work cannot be tolerated today by any belligerent. In cases amounting to sabotage, police and penal measures had therefore to be taken, the most important of which was the short transfer to a labor camp; in special extreme cases imprisonment in a concentration camp was inflicted.

The Document 1063–PS, RF–345, shows the similarity in the execution of the regulations towards Germans and foreigners.

Such police measures which are caused by the disloyal conduct of the worker are justified measures. The Wartburg Document RF–810 shows in the report of the reporting official, Dr. Sturm, that such measures were carried out in a very moderate manner, and that only 0.1 to 0.2 per thousand were thus punished.

Hence it follows that issuing of regulations concerning the maintenance of discipline is in itself not yet an "illtreatment" which could be the basis for a crime against humanity. Such an illtreatment however can consist of excesses which occurred outside the competence of the defendant Sauckel. He can only be held responsible for those if the subjective facts of the case are fulfilled and if he knew of such excesses and approved of them, although he could have prevented them.

In summing up one can say that the "regulated utilization of labor" is permissible in international law and that restrictions imposed on workers within the limits of necessities must be permitted for reasons of state security. On the other hand excesses in carrying out the regulations have to be regarded as illtreatment and could mean crimes against humanity. For those he is responsible who has instigated them or who, within the sphere of his competence, did not prevent them.

Should the extensive scale of the charges brought against defendant Sauckel proceed from the above stated legal considerations, it is necessary first of all to single out those fields in which the evidence reveals him to be absolutely clear of any responsibility. In the first place, it is not proved that defendant Sauckel can be connected with the biological extermination of the population. His whole interest in fact has proved to have been just the opposite, since his purpose was to obtain people as laborers. With the migration measures and methods used in this respect, he had nothing to do.

Work in concentration camps was just as far removed from defendant Sauckel's responsibility. Himmler's Posen speech in October 1943 (*Doc. 1919–PS*) reveals that the SS had erected gigantic armament plants of their own. We know that Himmler covered his extensive labor requirements by despotic, arbitrary arrest of persons in occupied territories. In Germany itself, he had workers engaged in regular employment arrested on insignificant pretexts and brought into concentration camps, fraudulently vis-a-vis the regular labor offices. This is clearly shown in Document 1063–E–PS by a letter dated 17 December 1942 as well as letters dated 25 June 1943, in which alone a requirement of 35,000 prisoners is signified. Moreover, any correspondence exchanged with reference to concentration camp labor never passed through Sauckel's services. As an example, I refer to Document 1584–PS containing some correspondence with Himmler's Department. Defendant Sauckel's name is never mentioned with reference to a conscription of prisoners, and the witnesses have unanimously stated that defendant Sauckel had no connection with these matters. This is also confirmed by the statement of the Director of the Ministry Armament's Labor Office, Schmelter, who received the required prisoners direct from Himmler.

Another subject which must be cleared is the conscription of Jews for labor. This labor conscription is a part of labor conscription of concentration camp prisoners; it was Himmler's own personal secret kingdom. This is revealed for instance by Document R–91 in which Himmler's service orders the arrest of 45,000

Jews in the "Jewish Sector" as concentration camp prisoners. By the production of Document L–61, the Prosecution has attempted to convict Sauckel of a share of guilt in this department. This document is a letter dated 26 November 1942 from Sauckel's service to the President of the National Labor Office, to the effect that, in agreement with the Chief of the Security Police and Security Department, Jewish workers remaining in the plants must be withdrawn and evacuated to Poland. As a matter of fact, this letter actually confirms that Sauckel had nothing to do with Jewish labor in the concentration camps, since Jewish workers were actually withdrawn from his department under the false pretense of evacuation. The measure is indeed solely concerned with the purely technical purpose of releasing the Jewish laborers and replacing them by Poles, an operation which could not have been carried out without the participation of Sauckel's service.

This letter is the sequel to a correspondence which can be traced back to the period prior to Sauckel's assumption of office, and Document L–156 is subsequently concerned with the same technical operation. The unimportant character of the matter is attested by the fact that these letters were not composed at defendant Sauckel's headquarters in the "Thueringenhaus" but in an auxiliary office in the Saarlandstrasse. Defendant Sauckel disclaims knowledge of these operations and points out that the letters do not bear his original signature but were, according to the routine of his service, made out in his name precisely because they were of minor importance. The fact that the letters begin with the routine business term of "in agreement with" and not "in accordance with" (the orders of) the Chief of Police SP and SD does not mean that they refer to a connivance but merely to orders received from the authoritative headquarters.

Next, reference has been made to "Extermination by Labor". But Documents 682–PS and 654–PS dated September 1942 unmistakably show that a secret maneuver of Himmler and Goebbels in cooperation with Reich Minister of Justice Thierack is here involved. Defendant Sauckel is not concerned.

Neither was the conscription of workers in the framework of the Organization Todt under Sauckel's responsibility. The accusations proceeding from Document UK–58 in this respect, bearing upon labor conscription methods in the Channel Islands, do not therefore concern him. The documents do not show that defendant Sauckel was aware of these proceedings or that he could have prevented them.

This disconnection between defendant Sauckel's labor jurisdiction and the OT (Organization Todt) is confirmed in Document

L–191, i.e., the report of the International Labor Office in Montreal.

A special department is the apprehension of labor forces by civil and military departments. This was to a certain extent run as "brutal conscription" and kept secret from defendant Sauckel because he opposed it and wished to prevent it by every means. To a certain extent, his objections were dismissed by higher authority. Under this category comes the labor conscription by the SS, Railway, Air Force Building Batallions, Speer's Transport and Traffic Units, Fortification and Engineering staffs, and other services. The exclusion of these contingencies from the scale of accusations must especially exculpate Sauckel, since in these cases Sauckel's orders were not authoritative. Document 204–PS illustrates in this respect the circumstances in which "Transport assistants" were procured in White Russia. Document 334–PS shows the same with regard to the execution of an independent drive for "Air Force Assistants", which can cast no guilt upon Sauckel.

The commitment of adolescents, which is known as "Heuaktion" under Document 031–PS of 14 June 1944 as a point of the charge, lies outside of Sauckel's jurisdiction, as it is shown specifically by this document. The IXth Army, together with the East Ministry, were the originators.

A letter of the co-defendant Rosenberg to Reich Minister Lammers of 20 July 1944 (*Doc. 345–PS*) refers falsely to the "Consent" of the General Plenipotentiary for Labor Commitment; it states, however, that the defendant Sauckel was not connected with an SS-Helper Action and that he refused cooperation in this affair. According to this, as stated by Document 1137–PS of 19 October 1944, an individual office in the Rosenberg Ministry takes care of the seizure youth and accomplishes the task with its own personnel. Excluding the defendant Sauckel's agency, labor is supplied directly here to the armament industry.

Circumventing defendant Sauckel's agency, measures also took place which Hitler induced directly by orders to the local offices of the Wehrmacht and of the Civil Administration; it was so, for the labor commitment ordered in the occupied territories for the fortification of the Crimea; this is shown by Document UK–68.

The seizure of labor in Holland, which was carried out by the Wehrmacht under protest of the labor service offices, is another one of these cases; this is shown in Document 3003–PS, in Lt. Haupt's report and the defendant Seyss-Inquart has confirmed it.

An important subject, which is beyond the defendant Sauckel's responsibility, refers to all the actions executed as punitive measures against partisans and resistance groups. These are independent measures of the police; I already spoke about their judicial evaluation. Whether they were admissible and could be approved, depends on the circumstances. For example, measures against the resistance movement in France as described in Document UK–78 (French Government Report) are excluded here. Therefore, a direct responsibility of defendant Sauckel ceases to exist.

Therefore, the very incriminating events which are enumerated in count III, paragraph VIII, of the indictment under "deportation", the destinations of which were the concentration camps, are not within the responsibility of the defendant Sauckel.

Furthermore, the "deportations" for political and racial reasons which also end under VIII of the indictment as the deportation of Frenchmen into concentration camps are also not within the responsibility of the defendant Sauckel. Furthermore, the resettlements of Slovenes and Yugoslavs described under B (2) also must be excluded.

According to the indictment, under VIII, H 2, only a part of the additionally mentioned approximate 5 million Soviet citizens are mentioned as having been seized by labor commitment, the others were removed by other means to which the regulations of the defendant Sauckel did not apply. This separation is not of importance on account of the number of people, but because the presumed bad conditions could have taken place just in that sector, since greater danger of improper treatment existed there.

The prisoners of war also are exempted from the field of responsibility of the defendant Sauckel. These labor forces did not have to be conscripted, but were only directed. This was done by means of special labor offices, which were separated from the other procedure with the prisoner camps and collaborated exclusively with the armed forces. The task consisted only of using the prisoners of war there, where they were needed.

The defendant Sauckel could only request the transfer of the prisoners of war. Such a possibility is referred to by the Prosecution Document 1296–PS of 27 July 1943, which refers under III to the increase in the use of prisoners of war in collaboration with the Army High Command.

The assignment of prisoners of war to plants took place only under the supervision of the Wehrmacht; this latter controlled compliance with the Geneva Convention. Saucke is not in any way connected with the death of hundreds of thousands of prisoners of war of the Soviet Union in 1941 of whom Himmler speaks in his Posen speech (*1919–PS*), and for whose replacement workers had to be brought in.

If, in spite of this, in Document USSR–415, i.e., the official Soviet report about the Lamsdorf Camp, the defendant Sauckel is brought into connection with the claimed ill-treatment of prisoners, then this is done only on the basis of the claim that the number of personnel in the camp was reported to him in a purely businesslike manner. The charge cannot be maintained. The document at that does not contain a sufficient listing of time after the year 1941.

The defendant Sauckel, although he personally was not responsible, has intervened in excess of his official duties for the care of the prisoners of war, because he was interested in their willingness to work. He has issued general decrees. In this way Document Sauckel 36 shows that he demands sufficient subsistence, and Document 39, that he demands the same working hours as for German workers; he also points out here the prohibition of disciplinary punishment by the plants.

A further separation of the accusations raised must be made after the time of the incidents. The defendant Sauckel took over his office only on 21 March 1942. His measures, therefore, could have an effect only some time later. How conditions were previous to that can be seen from some documents from the year 1941. In Document 1206–PS, subsistence through horse and cat meat is suggested by leading authorities, and in Document USSR–177 the production of bread of a very inferior quality is suggested. Just a short time before the defendant Sauckel's taking office, Hitler in a sharp decree orders the confinement of the workers behind barbed wire. It can be said that a low point in the treatment of the foreign workers who at that time were in the Reich had been reached. The idea which one has of the simplicity and the efficiency of the Russians is tragic.

With the taking over of office of the defendant Sauckel, a fundamental change has taken place here, which led to a constantly increasing improvement of the situation. The credit for having established a change here falls, according to the following documents, solely to the defendant Sauckel. This is shown in particular by Document EC–318, which represents a record of 15 April 1942 about the first meeting of the defendant Sauckel with Reich Minister Seldte and his specialist staff on the occasion of his taking office. It has been recorded there that it was the defendant Sauckel who made the taking over of his office dependent on the condition that the subsistence of the foreigners must be the same as for the Germans and that the fulfillment of his demand was assured him by Hitler, Goering, the Food Minister Daree (sic) and his Secretary of State, Backe. It furthermore has been recorded there that the defendant Sauckel demanded the removal of the barbed wire and succeeded in this, and finally that he immediately took steps against the low wages of the Eastern workers.

The execution of his fundamental demands was then also immediately employed by the defendant Sauckel and followed through with tenacity against the resistance of all authorities. The Program of the labor commitment of 20 April 1942 (*Doc. 016–PS*) accordingly takes immediate steps against cruelties and chicaneries and demands that foreign workers be humanely treated; the hope is even expressed that a propaganda effect must surely be achieved by the way in which the labor commitment was carried out. This thought was frequently reiterated later. An economical commitment of workers was required in order to counteract the waste which was occurring on the part of influential agencies.

A year later, on 20 April 1943, the defendant Sauckel again addressed a declaration of program to all persons concerned in labor commitment. This is the repeatedly mentioned "Manifesto of Labor Commitment", Sauckel Document No. 84, which was issued as a warning and a call to battle addressed to all agencies which opposed the serious responsibility of the defendant Sauckel. Goebbels opposed it under the pretences that the title was too assuming and the propaganda feature of the document essentially too weak. Other agencies just disregarded the copies sent to them and did not forward them, whereupon copies were sent directly to the industries concerned. How this message was handled by the reluctant agencies is shown by its description "notorious manifesto" which was unanimously adopted for it in a session of the Central Planning Board on 1 March 1944 (*Doc. R–124*).

Defendant Sauckel was reproached for having been "too good." I refer to a remark made by General Milch who was interrogated before the Tribunal, in which he refers to the Central Planning Board and criticizes the ostensibly too lenient treatment of loafers and declares that if anything was undertaken against them, agencies were immediately to be found in Germany which would protect the "poor man" and would intercede for the human rights of others. (*Doc. R–124*).

The attitude of defendant Sauckel was generally known and has been confirmed by various documents; thus agencies addressed him because of complaints and deficiencies, not in order to make the defendant Sauckel responsible for them but to solicit his help, because everybody knew how seriously and eagerly he advocated improvements.

Thus Document 084–PS that is Report of Dr. Gutkelch of the

Central Agency for Eastern People of the Rosenberg Ministry, dated 30 September 1942, emphasizes in various parts the influence of defendant Sauckel and recommends getting into closer touch with him.

Co-defendant Rosenberg also is pointing at Sauckel's strenuous efforts in Document 194–PS, i.e., letter of 14 December 1942 to Koch, Reich Commissioner for the Ukraine.

Co-defendant Frank likewise on 21 November 1943 asked defendant Sauckel (*Doc. 908–PS*) for a basic change of the legal position of Poles inside the Reich.

To what extent do real events correspond with that which has been stated?

The first question to be dealt with is seizure, which is practically identical with deportation. It is connected with the examination of the treatment of workers which is designated by the word "slave labor."

The evidence has refuted the error, according to which defendant Sauckel on his own responsibility carried out the commitment and seizure of foreign workers through his own organization. It has been established that the supreme agencies of the occupied territories executed the laws regarding compulsory work, which they had received on Hitler's orders. All these agencies had their own administrative system and guarded their departments against the intrusion of others.

A communication of the Rosenberg Ministry of the East to Koch the Reich Commissioner for the Ukraine, dated 14 December 1942 (*Doc. 194–PS*), in which co-defendant Rosenberg particularly refers to the prevailing right of sovereignty questions of Labor commitment proves that this administrative system had not broken through. Those supreme agencies had their own labor offices, which were organized in detail from the Ministry down to the local office. (*Document 3012–PS, Ordinance of the Supreme Command of the Army dealing with compulsory work in operational sector East of 6 February 1943; Document RF–15, Ordinance of 6 October 1942.*)

Only with these agencies could defendant Sauckel place requests for the number of workers he was ordered to send to Germany and only with them give departmental instructions. These were his limitations and he never went beyond them. He took note of the right of execution, as opposed to the right of instruction. For this task a deputy was appointed for each territory, who in accordance with the ordinance of 30 September 1942 (*USA 510*) was directly subordinate to defendant Sauckel but did not belong to his agency, as he belonged to the territorial agencies. This was expressly confirmed by the witness Bail, who had been appointed by co-defendant Rosenberg, expressly for the most important deputy in the East, the Reich Councillor Peukert, who belonged to the Staff of the Ministry of the Ministry East.

This Reich Councillor Peukert was at the same time consultant for the Economic Staff East of the rear Army Territory, which was close to the field of the civil administration; in addition to his duties he acted as deputy of the defendant Sauckel in the Personnel Union (Personal Union). This is proved by Document 3012–PS, i.e., a note on this document dealing with a conversation of 10 March 1943 concerning labor commitment, in which the position of Peukert is noted in the membership list. By this "Personal-Union", created in the interest of the territorial authorities, all unauthorized interference of defendant Sauckel was made impossible. When co-defendant Rosenberg complained about the methods of labor mobilization in the East as per Document 018–PS, that is in the letter to defendant Sauckel dated 21 December 1942, this is to be considered as the complaint of a Minister who does not consider himself in a position to be successful against his subordinate, and thus addresses the presumable source of the difficulties, which had been made for him.

It is true that these difficulties could be removed immediately when defendant Sauckel would desist from execution of his order. But execution was just his job, which according to the decree of appointment had to be executed under all circumstances, especially against just such opposition as occurred here on the part of co-defendant Rosenberg.

Defendant Sauckel had to fight against opposition arising from weakness and from departmental egotism, and had to see to it that local agencies would not fail to supply the required manpower due to need for rest, or that other offices would hold it back from selfish interests. "With all means" and "ruthless" are recurring expressions which are employed in the fight against these aspects.

General Falkenhausen, the Military Commander in Belgium and Northern France, during his hearing, mistakenly declared in Document RF–15 that defendant Sauckel forced him to execute the commitment of labor and accomplished it through his own organization. But he had to admit that this opinion was incorrect when the order signed by him about the introduction of compulsory labor service was put before him. This presentation is confirmed by the statements of the witnesses Timm and Stothfang.

In France seizure was made by the French administration. The German office above it was not the office of defendant Sauckel but of the Military Commander in France, where Sauckel had only a deputy. The negotiations which defendant Sauckel conducted in Paris and which were the subject of the evidence lie outside of this activity; they are negotiations of diplomatic nature between the German and French Governments in which Sauckel participated. They were held in the German Embassy. Circumstances in the other spheres were accordingly.

Also the Recruiting Commissions which corresponded to the labor commitment staffs in the rear army districts and in operational districts were by no means offices of the defendant Sauckel, as co-defendant Rosenberg assumes. These recruiting commissions stood nearer to defendant Sauckel only because they were composed of experts who came from the German labor offices, which belonged to Sauckel's Department. They received specialized directives only through their superior office in order to guarantee a uniform handling of all recruiting regulations. Regulation No. 4 in Sauckel Document No. 15 is authoritative on this point.

This stipulation already issued on 7 May 1942 namely before the nomination of the deputies on 30 September 1942 provides for the sole responsibility of the military and civil authorities of the occupied territories. The deputies mentioned there to whom were assigned the same functions are the deputies at the German missions in friendly foreign countries.

This was misunderstood by the prosecution and therefore wrong conclusions were arrived at to the disadvantage of the defendant Sauckel about the responsibility for recruiting and transport. Also the interpretation of the provision that "all technical and administrative procedures of the Labor Commitment were exclusively within the competence and responsibility" of defendant Sauckel is incorrect for the occupied territory.

This stipulation refers solely to the functions in the Reich and lays the basis for the competence of the General Plenipotentiary for labor commitment of the district labor offices and labor offices; this comes forth from Document 016–PS (last paragraph). The defendant Sauckel, therefore, is not directly responsible for the seizure. Indirectly, however, responsibility can be charged to him in that he was aware of these bad conditions and knew that they could not be stopped, but nevertheless demanded more workers.

To this the following must be said: In the defendant Rosenberg's letter of 21 December 1942 (*Doc. 018–PS*) the defendant Sauckel learned for the first time of the recruiting methods which were designated as mass deportation. At the meeting which followed this in the beginning of January 1943 the defendant Rosenberg declared that he was opposed to this and that he would not tolerate such procedures. This is also confirmed by his previous letter of 14 December 1942 to Koch, Reich Commissioner for the Ukraine (*Doc. 194–PS*), in which he clearly calls the latter's attention to his obligations to proceed legally.

Koch's memorandum of 16 March (*Doc. Ro–13*), of which the defendant Sauckel did not learn until here at the trial, gives an explanation, according to which these incidents are said to be exaggerated individual cases, the justification of which is based on the need for measures to be carried out for the restoration of the authority of the occupation officials. It is expressly declared in this that the recruitment of workers is to proceed with legal means and that steps will be taken in the event of arbitrary measures. (*Doc. R 13, page 11 and 120.*)

It did not seem out of the question that it might have been a matter of propagandistic exaggerations and activities to which Koch particularly refers. In war such a possibility is likely, and the propagandistic style of the Molotov report (*Doc. USSR–151*) only emphasizes this.

The defendant Sauckel was also supported in this idea as the result of a "manhunt" investigation which was reported to him at Minsk by Field Marshal General Kluge; it had led to the explanation that it had involved the assembling of workers employed by a labor firm at the time of the retreat.

The Katyn case shows how difficult it is to clarify such events according to the truth when they are made use of propagandistically as combat measures.

As the witnesses from the defendant Sauckel's office have confirmed, no other incidents involving these abuses have become known. The cases which were reported are notoriously in part repetitions of the same happenings which were reported from different sides.

All these reports, however, do not show an endeavor to approve such things, but are a sort of house alarm for the purpose of remedying and improving them.

Can one believe defendant Sauckel when he declares that he did not know about the conditions alleged by the Prosecution?

What reached him through official channels cannot be considered as proof of cognizance, and the witnesses confirm that the so-called methods were unknown.

But we have here documents of the authorities of the occupied countries, from which it appears that the Reich Commissioner in the Ukraine ordered the burning down of houses as a measure of combat resistance against the administration, and there are orders forseeing such measures. Reports made to the Ministry of the

East regarding such events do not lead to penal prosecution, but to the suspension of the procedure, e.g., the Raab case (*Doc. 254–PS*) and the Mueller case (*Doc. 290–PS*).

In contradiction to this uncertainty the following must be stated: The measures employed were not accepted by the highest instances, but were secretly made use of by the lower instances. From the preliminary proceedings of the Raab and Mueller cases, it definitely appears that the existing regulations were unknown at the Ministry.

Defendant Sauckel has travelled through the Ukraine, but he was not told just that which might have gotten the local offices into trouble. The views of defendant Sauckel were known, and on the other hand there existed a violent quarrel between the offices of the Reich Commissioner Koch and the Reich Ministry Rosenberg. When the documents of both offices which have been submitted are read it can be seen from the file notes that in this battle both sides had collected arguments and that nobody wished to commit himself. Since the defendant Sauckel himself had no direct authority, it is understandable that the actual conditions remained unknown to him.

Another point of view has to be considered. Various documents mention that a certain pressure has to be applied in the procurement of workers, since the workers had to be obtained "under all circumstances". Does this give a free hand for all methods? One must see what was actually done in pursuance to these statements.

The OKH in one case then ordered the increased conscription of workers, and permitted collective seizures, but prohibited collective punishments in connection with this. See Document 3012–PS with telephone message of the Economy Staff East to General Stapf of 11 March 1943. The best picture is shown here in the same Document 3012–PS by a remark in the files concerning a discussion of 10 March 1943. Here General Nagel requests clear guiding principles and State Councillor Peuckert wants "reasonable" recruitment methods established by the OKH as the authorized agency. Document 2280–PS is also relevant here, which is the only personal statement of the defendant Sauckel concerning this question and which was made in Riga on 3 May 1943. There he states that only "all permissible means" are allowed. Document 3010–PS is also to be quoted, Economy Inspection South, in which on 17 August 1943 the use of "all suitable means" is permitted.

Orders are issued which contain severe measures against noncompliance with the duty of compulsory labor deprivation of food and clothing cards. Imprisonment of relatives is threatened and the taking of hostages held out as a prospect. How about the admissibility of such measures?

The deprivation of food cards has today become a generally used means of coercion which is based on the rationing system, and which has its cause in the conditions of time. It can be handled easily and does not require any special executive force; on the other hand, it is extremely effective.

Concerning the imprisonment of relatives severe inroads into individual responsibility can be recorded even today. The Hague Convention of Land Warfare protects only against the collective punishment of the population, but it does not protect the members of the family who may be considered as sharing the responsibility in the case of a refusal to work. The French law of 11 June 1943 which was presented as Document RF–80 also provides for such responsibility only in the case of deliberate cooperation.

There finally remains the "shooting of a prefect" which the defendant Sauckel demanded. Apart from the fact that this statement as such is irrelevant from the point of view of criminal law, because it was not actually carried out, its legal meaning is merely a demand to apply the existing French law. This law has been submitted by the Prosecution as Document RF–25; decree of 31 January 1943 by the military commander in France, article 2 of which provides for the death penalty.

Also misunderstood by the Prosecution is a statement uttered by the defendant Sauckel, according to which one must handcuff the workers in a polite way. (*Doc. RF–816, discussion by Sauckel in Paris of 27 August 1943.*) But as appears from the context, what is in question here is only a comparison of the clumsy appearance of the police with the obliging manner of the French, without handcuffing being especially praised as a method of seizure; Prussian, clean, correct on the one hand but at the same time obliging and polite on the other hand, that is how one should work.

I refer again to the case of the proposal for "shanghaiing" in Document R–124, page 1770, which is known to the Tribunal from the proceedings. The statement which the defendant Sauckel has made gives an understandable explanation; according to it, from a legal point it was a question of a preliminary recruitment which was supposed to make the workers inclined to agree to the real obligation later on in the official recruitment offices.

These various incidents, shooting of a prefect, handcuffing, and shanghaiing may be but one can reach a complete understanding of the subjective side only if one considers why these statements were made, and from what conditions they originated. The background of all these statements is the struggle against resistance and sabotage which in France took stronger and stronger forms. Therefore, it is not a question of remarks of brutality and cynicism, but statements which were intended to counteract the indecision of the authorities.

Another thought which has to be added here is whether the defendant Sauckel had not exhausted the manpower of the country by his measures to such an extent that more workers could only be obtained by inhuman methods and that the defendant Sauckel must have known this.

The important thing here is the figure of the "quotas". It has been established that they were high, but it has also been established that they were not laid down arbitrarily, but only after a careful study by the statistical department. Only a small percentage of the population was actually seized, and it was not the impossibility of performance that was decisive, but rather the will to resist.

In the occupied territories of the East there were large reserves of manpower, available especially among grown-up young people who were not appropriately utilized. The German troops, their ranks seriously thinned, saw the richly populated villages during their retreat, and felt the same forces shortly afterwards as a reinforcement to the enemy's fighting power.

In France there were likewise many forces which placed themselves under the protection of the Maquis or the protected plants. This is not only confirmed by French government report (*RF–22*), but it also appears from a remark which Kehrl, as witness for the co-defendant Speer, made in the Central Planning on 1 March 1944 (*Doc. R–124, page 66*). There this witness states that workers are available to an extensive degree in France. Especially conclusive here is also Document 1764–PS (page 6), i.e., the report of Ambassador Hemmen of 15 February 1944 which deals with the "Reconstruction Program" of Marshal Petain, and which refers to the population as untouched by the war which increased by 300,000 young men every year.

If the number of the seized workers is of importance in this connection, it must be compared with the total population figures, and, on the other hand, it must be taken into consideration that Germany did not demand anything what she did not ask of herself to an even higher degree.

The defendant Sauckel had to be convinced not that people were unable to perform, but that they did not want to perform. In order to influence this desire, the propaganda struggle and the competition of threats of punishment was created by both parties, and this first brought the population of the occupied territories into a state of moral conflict, which became the undoing of many.

The defendant Sauckel could with good reason refer to the consequences of the counter propaganda and the deteriorated war situation as cause for the necessity to use coercion; he could, however, on the basis of the evidence to which he had excess, not fail to be convinced that the exhaustion of the countries was so great that nothing more could be extracted from them without the use of inhuman methods.

The defendant Sauckel believed he could obtain his object not by using violence but by creating special working conditions. As example, I refer to the promise which Sauckel himself gave on 3 May 1943 in Riga (*Doc. 2228–PS*).

Apart from this there is still another field of labor procurement which must be put in a different category. This is the liberation of prisoners of war in order to make labor forces available for Germany by "releve" or "transformation".

The French governmental report RF–22 declares both methods of recruiting labor forces as inadmissible. It is pointed out in the report that the exchange on the basis of "releve" is equal to the enslavement of about triple the number of French workers. Against this it must be stated that the replacement workers came at times only for half a year for voluntary work and in succession. After a year and a half all the workers were free; the prisoner was free immediately.

Coercion for the execution of the "releve" did not exist. The offer of release is not legally assailable. Captivity can be terminated any time. Release can also be made subject to a condition. The French report overdoes the moral indignation by quoting a phrase of the President of the News Agency of the United States; this phrase speaks of the "abominable choice" of either to work for the hereditary enemy or to rob a son of his country of the possibility of release from captivity.

To refute this, I refer to the healthy sentiment according to which in the older Russian literature such a change was praised as a patriotic and magnanimous deed on the occasion of the Northern War. Neither the King of Sweden nor Peter the Great have therefore considered the exchange as replacement by a substitute slave.

The "Erleichterte Statut" ("Transformation") is contained in Document Sauckel 101. It is the release of a Frenchman from captivity against the acceptance of other work, under the condition that a further French worker would come to Germany according to the "releve" regulations. No prisoner of war was forced to change his legal position, but whole camps volunteered for it. If a prisoner made use of the possibility offered, he forfeited thereby the juridical special labor protection of the Geneva Convention;

but this was done in agreement with his government. This does not constitute a violation of international law.

The furlough home connected with the change-over was ruined by the fact that the people who were granted those furloughs did not return, already after the first convoys. The report RF–22 itself states on page 69, that of the 8,000 people of one leave convoy, 2,000 did not return. The report states that the "unfortunate people" were placed before the alternative, "either you return, or your brothers must die". This consideration, however, did not impress them. Their promise could also not prevent them from immediately joining the Maquis. The abolition of these furloughs home does not therefore constitute an arbitrary act in slave labor. The reading of the French report can only increase this impression.

It follows therefore that in this special field also, no seizure of workers which violates the laws of war or which were carried out in an inhuman manner has been effected by the defendant Sauckel.

I now come to the question, treatment of the workers. In order to facilitate a proper judgment, a separation of the fields of responsibility is also made here. The works manager was responsible for the general labor conditions in the works. The general conditions of life outside the works was the competence of the German Labor Front. These spheres of responsibility become conspicuous through the fact that two special representatives for them are mentioned in the indictment, namely Krupp and Dr. Ley.

The defendant Sauckel can be held responsible for the incidents in these spheres only insofar as they are due to his decrees, or as, contrary to his duty, he did not intervene by direct supervision. The defendant Sauckel was directly responsible for the wages. Already on entering office, he found a schedule of wages which he could not alter on his own responsibility; to do this he had to apply for the authorization of his superior office (i.e., the Four Year Plan) and for the consent of the competent Reich Minister. The legal regulations summed up in Chapter "Wages question" of my Document Book II show that the basic decrees are not issued by the defendant Sauckel, but by the Cabinet Council for the Defense of the Reich (*see Doc. Sauckel 17, 50, and 58*) or by the Reich Minister of Economics (*Doc. 51*) and the Reich Minister of Finance (*Doc. Sauckel 52*). The defendant Sauckel could schedule wages and fix piece wages only within this framework fixed for him, in so doing he had to consider the interests of the Ministries in question. So far as it was really possible for the defendant Sauckel to do so, he made amelioration possible; thus a series of his decrees show that he granted favors such as premiums, compensatory payments, and similar favors (*compare Doc. Sauckel 54 and 58a*).

The defendant Sauckel's activity, however, aims on the whole at increasing wages by influencing the competent authorities. This is shown in Document 021–PS of 2 April 1943. Therein we find as appendix a treatise with statistical material to the proposition of a basic improvement of wages for Eastern workers. It thus results from a study of the wage sheets from different periods, that the average wages of Eastern workers have been raised several times during defendant Sauckel's term of office.

It was for the defendant Sauckel to regulate the working hours, but within the framework of the superior competence of the Reich Minister of Labor Seldte. This is shown by Document Sauckel 67, where Seldte regulates the working hours for Eastern workers in paragraph 3 of the decree of 25 January 1944. The working hours were on principle the same as for the German workers, corresponding to the tempo of the work in the factories. This is also admitted by the French government report UK–78–3; the cases enumerated there on page 580 of excessive working hours are contrary to the orders of the defendant Sauckel. Since they do not contain any dates of years, it cannot be recognized, if they deal only with temporary measures or with permanent conditions. The same lack of clarity exists in the French report RF-22, page 101; there the minimum working time has been listed as 72 hours, which was increased to 100 hours. This could deal with the work of concentration-camp inmates, which has been left abstruse.

The settlement of the working hours was then changed by Goebbels, who on the basis of his plenipotentiary powers for the waging of total war introduced the 10-hour day for Germans and foreigners, although in practice this could not have been carried out generally. An unreasonably high working time cannot be maintained and leads to setbacks.

Special attention has been paid by the Prosecution to the regulation of the working hours of female domestic workers from the East, of whom in the place of the 400,000-500,000 girls originally demanded by Hitler, only 13,000 came to Germany. The Prosecution has presented the memorandum for the employment of these female domestic workers as Document USSR–383. There it is stated under 9, that a demand for time-off does not exist. The purpose of the regulation was to leave the settlement of the time-off to the household according to its requirements. Another idea of the regulation is also hardly imaginable, because after all it was intended to accept these female domestic workers in particular into the families, and to give them the opportunity to remain in

Germany. They had been selected as girls who were considered particularly dependable, who had reported voluntarily for domestic work. In accordance to the general practice the order was amended by a subsequent decree (*Doc. Sauckel 26*) simultaneously with the rescinding of all remaining limitations.

The regulation of the working-hours for children took place within the field of German Labor Security Legislation; in this case it deals with children who, contrary to the decrees of the defendant Sauckel, had come to Germany with their parents in an unregulated manner. Their work can deal with agricultural occupations only, as it is also practiced for German children. In this respect it is pointed out that during the war the school-children in Germany from their 10th year upward could be utilized for work, according to the decree of the Reich Youth Leader of 11 April 1942 (*Doc. Sauckel 67a*).

A summarizing discussion by Dr. Blumensaat in the complete Document Sauckel 89 gives the best information about the whole complex of wages and working hours, as it was finally regulated by law.

This immediate responsibility alone, however, cannot serve the defendant Sauckel as an excuse, if he knew and tolerated those things which, according to the Prosecution's assertion, branded the transportation and the life in the camps and factories. It is his duty to superintend, even there where he is not directly responsible. Such a sphere of activity, which consisted in the accommodation and feeding of the workers, was the responsibility of the works.

As regards the fitting up of the camps for foreigners, the same regulations as for the camps for German workers were applied, by virtue of decrees of the competent Reich Minister of Labor Seldte (*Doc. Sauckel 42, 43, and 44*). It is indisputable that the accommodation suffered from war exigencies, in particular from the effects of air warfare; the abuses, however, were eliminated as far as possible. The condition of the foreign workers was not different here from that of the German civil population. The food supply suffered from blockade and want of communications. The established rations, contrary to the notorious statements on the feeding of the Russians laid down according to the schedule of 24 November 1941 in Document USSR–177, amounted to 2540 calories for the Soviet prisoners of war. A further schedule has been submitted with the Affidavit of the witness Hahn as Exhibit Sauckel No. 11. According to this the ration in the Krupp works amounted to 2,156 calories for the Eastern normal worker, 2,615 calories for the heavy workers, and supervision insured their careful distribution.

The Reich Food Ministry was responsible for the supply of food. Strong accusations have been brought in by the Prosecution with regard to both points. These, however, are only possible when the existing regulations have not been observed. It is quite likely that mistakes have been made in this large sphere of activity in the course of years, but the general picture is not only composed of mistakes, whereon a judgment cannot be based. The actual conditions have not been clarified in this procedure to the extent that one could say the abuses were so general and obvious that the defendant Sauckel must and did know them.

Contrary of the uncertain statements of the witness Dr. Jaeger is the affidavit of the witness Hahn (*Exhibit 11*) which refutes them to a large extent. The affidavits of the witnesses Dr. Scharrmann (*Exhibit Sauckel 17*) and Dr. Voss (*Exhibit Sauckel 18*) confirm that no serious abuses existed in their spheres of activity.

In addition to the obligation of the Works Managers, the German Labor Front had to care for the foreign workers (*Doc. Sauckel 15*). Its field of activity was among other things, transportation and the supervision of medical care, as well as general care. The extensive activity which this very large organization developed has not been described in these proceedings. The basic principles of the German Labor Front can be seen from Document Sauckel 27, i.e. regulations of the German Labor Front regarding the status of foreign workers in the plants. The aim is emphasized as follows: Maintenance of the willingness to work by observing conditions of contracts, absolutely fair treatment, and comprehensive care and control.

The German Labor Front was also responsible for the carrying out of the transportation according to Regulation 4 (*Doc. Sauckel 15*). Sauckel's instructions are contained therein. This task includes transportation to their place of work. The witnesses Timm and Stothfang and Hildebrandt have testified about this field of activity and not reported anything about bad conditions. The descriptions in the Molotov-Report (USSR–51) cannot refer to transportation, which was carried out under coordinated direction, but only to so-called "wild" convoys. The same applies to convoys, the destination of which according to the indictment were the concentration camps. The great extent to which the defendant Sauckel has occupied himself from the very beginning with transportation conditions is particularly shown by Document 2241–PS submitted by the Prosecution; it contains a decree where conscientious directives for the prevention of the utilization of unsuitable trains are given. Mistakes have occurred, especially the incident mentioned in Document 054–PS of the return transport of workers; these had been brought into the Reich before Sauckel's time in violation of his basic principles. This was a matter of a single incident, and the necessary orders were issued immediately. The return journey of sick persons in conditions which did not permit them to travel in convoys was prohibited, and Bad Frankenhausen was placed at their disposal. This was followed by the order regarding the accompanying of such transports by male and female assistants of the Red Cross (*Doc. Sauckel 99*).

The carefully and thoroughly organized apparatus of medical care, which worked under the collaboration of the Association of Panel Doctors, has not failed, in spite of the greatest difficulties, rather the great result has been established that no epidemics and serious diseases broke out. The cases presented by the Prosecution from individual camps of the 60 camps of the Krupp firm can only have arisen from the unusual chain of circumstances. They cannot prove generally bad conditions, of which these conditions could be typical. Another Document, RF–91, has also been presented, i.e., the medical report of Dr. Fevier of the French Delegation of the German Labor Front, which was composed after the beginning of the invasion on 15 June 1944. Besides faults which it is intended to correct, the report also points out good things; it speaks with particular acknowledgment of leaders of youth camps, of the systematic X-ray examinations, and of the support given by the district administrations, and similar things. A real overall picture of conditions could only be obtained by the study of the medical reports of the Health Offices of the German Labor Front existing everywhere.

For the defense of the defendant Sauckel, the circumstance is only of importance here in that a distant onlooker like himself could not have a clear picture of bad conditions. The sanctioning of such bad conditions would have stood in gross contrast to the actions and declarations of Sauckel. The defendant Sauckel did not acquiesce if a Gauleiter perhaps said, "if somebody has to freeze, then first of all the Russians"; he intervened here, and he stood out against it publicly in his official Handbook of the Commitment of Labor (*Doc. Sauckel 19*).

The defendant Sauckel also tried to improve the food outside of his competence; this has been confirmed by several witnesses, among others the witness Goetz (*Exhibit Sauckel 10*); it is also shown by the record of the Central Planning Board (*Doc. R–124, p. 1783*). The defendant Sauckel did not let matters go on anyhow, but he established his own personal staff, whose members traveled around the camps and corrected bad conditions on the spot. He also attempted to obtain clothing, and let factories work to a large extent for supplying the Eastern workers.

All witnesses who have been heard regarding this problem have again and again unanimously confirmed the benevolent basic attitude of the defendant Sauckel. I refer to the announcements and speeches of the defendant Sauckel, which always advocate good treatment. I do not wish to enumerate the documents in detail, and only emphasize the "Manifesto of the Commitment of Labor", Document Sauckel 84, in which he refers to his binding basic principles, and demands that these be recalled constantly and with emphasis. I also refer to the speeches to the Presidents of the District Employment Offices (Gauarbeitsaemter) of 24 August 1943 (*Doc. Sauckel 86*) and of 17 January 1944 (*Doc. Sauckel 88*).

The defendant Sauckel finally obtained, that even Himmler, Goebbels and Bormann acknowledged his ideas as correct. This is shown by Document 205–PS of 5 May 1943. This is a memorandum regarding the general basic principles for the treatment of foreign workers. There the basic principles of a regulated commitment of labor are accepted.

How do the statements of the Prosecution on the ill-treatment of workers as if they were slaves compare with this? It will be necessary to examine closely whether the cases referred to involve real abuse affecting workers in the process of normal mobilization, or abuses involving the deportation of prisoners and prisoners' work. Then one should investigate exaggerations and delays which can be explained by human weakness and peculiarities. In my opinion no adequate clarification of incidents has so far been obtained. Press reports already began to appear, which are bound to strengthen doubts as to the traditional concept of how foreign workers live.

The plan submitted with Sauckel Exhibit 13 portrays the numerous offices for checking and inspection, relative to the question of laborers. They did not report to the offices of the defendant Sauckel conditions of particular abuse. Perhaps the fact that offices were so numerous point to a weakness; it is quite possible that each Governmental Department kept silent about whatever mistakes originated under its own jurisdiction, rather than permitted their coming to the attention of the defendant Sauckel, because as a rule the controlling agencies were of a higher standing than that of the defendant Sauckel.

This should particularly be considered with regard to relations between the most important agency, the Deutsche Arbeitsfront (German Labor Front) under the leadership of Reich Leader Dr. Ley, and Gauleiter Sauckel. On closer examination of the document submitted as 1913–PS, an agreement on the creation of "central inspection offices charged with the care and control of foreign labor" it appears to be a carefully set-up "screen" against the defendant Sauckel. The document was devised by Dr. Ley and signed on 2 June 1943, then submitted to the defendant Sauckel for signature. He did not approve and announce it until 20 September 1943. For that very reason it is quite likely that Dr. Ley did not wish to invite criticism. On the other hand there is also little likelihood that the abuses were general and manifested themselves openly. Otherwise it would obviously have become known to the defendant Sauckel through his own control agencies.

In addition to his own staff, the defendant Sauckel on 6 April 1942 appointed the Gauleiters as "Commissioners for the Mobilization of Labor" impressing upon them as their foremost duty the supervision needed for enforcement of his orders. This becomes apparent from Sauckel Document 9, figure 5; the same holds true for Document 633–PS of 14 March 1943. Several Gauleiters were examined by the Tribunal as witnesses, and they have confirmed that the supervision was carried out as ordered, and that Sauckel checked it through members of his staff. No abuses were reported.

After due consideration of things, whom should one believe? Are we concerned here with exaggerated laments or do findings of a contrary nature deserve credit? There is no testimony by the French who, according to Document UK–78/3 IIId study, Chapter Ib, were taken to the real slave centers. There is no testimony by the Russians who, according to Document USSR–51, were sold for 10 to 15 Reichsmark.

In any case one fact speaks in favor of the defendant Sauckel, namely the fact that workers were always willing and industrious —as always confirmed by competent witnesses—and that when the collapse came no rising occurred in which the workers would have given vent to their natural wrath against the slave owners.

I have summarized actual happenings and have appraised them juridically. All this however, must appear to be juridical trifles where a higher responsibility is concerned. It has been voiced here that it will not do to let the insignificant Works' Managers take the blame, but that the moral responsibility must go to the highest Reich Government offices; of their own volition they should have introduced corrections on a larger scale to cope with difficulties inherent in the circumstances of that time. This might be in order for offices which had to power and the means of alleviation. The defendant Sauckel and his small personal staff had merely been incorporated in a Ministry already in existence, and he did not have such means at his disposal. His authority consisted of a narrowly circumscribed power to give directives on the mobilization of labor, and he has used it untiringly.

The Works Managers of the armament industry were formed into an independent administration, and outwardly separated from so-called bureaucrats. The duty of self-preservation corresponds to this administrative independence. Consequently, if the case arose that something should be done to improve the safety of foreign workers, of their situation in armaments works, it would have been the duty of such establishments and of the Armaments Ministry under whose supervision they operated to deal with the matter.

It was not the duty of the office of the defendant Sauckel to intervene in these matters, as they were under the Armaments Ministry. This is clearly evident from Document 4006–PS with decree of 22 June 1944; this is borne out by the most intimate personal relation between the Armaments Minister and Hitler which made the former the most influential man in the economic sphere.

If greater responsibility were to exist for mistakes made in the factories, such responsibility can be placed only where there is knowledge of such conditions and power to correct them.

There is still a question of law to be considered with regard to the indictment; namely whether the position of the General Commissioner for Labor Commitment is determined by Article 7 or Article 8, i.e., whether the defendant Sauckel was an independent government official or whether he had to carry out orders.

The recruitment of labor took place from time to time upon Hitler's special order, as part of the general program, and the subsequent distribution alone was left to Sauckel. This is also confirmed by the fact that defendant Sauckel always refers to Hitler's "Orders and Commands", as in the Manifest of the General Plenipotentiary for Labor Commitment (GBA) (*Doc. Sauckel 84, fig. 7*) and in the circular to the "Gauleiter" (*Doc. Sauckel 83*) and others. From this also derives the fact that defendant Sauckel from time to time specially reports execution of the orders, as well as the beginning and end of his official trips. (*Doc. 556–PS of 10 January 44 and 28 July 43.*)

It is an argument against independence, that according to the nomination decree, the defendant Sauckel was immediately subordinate to the Four Year Plan and incorporated into the Reich Ministry for Labor which had been preserved with its state secretaries. Only two departments were placed at his disposal.

If the kind of responsibility is to be determined, it can be only within the limits of Article 8 of the Charter.

Herewith I conclude my exposition regarding the special sphere of activity of labor commitment.

The defendant Sauckel is accused on all counts of the indictment over and beyond labor commitment. Particular isolated acts are however not charged against him as active agent. A closer characterization of the accusation has been effected in the course of the proceedings only in regard to the concentration camps. In this connection, however, it has been proved by a sworn affidavit of witness Walkenhorst (*Exhibit 23*) and a statement in lieu of oath of witness Dieter (*Sauckel Exhibit 9*) that no order for the evacuation of the Buchenwald camp upon the approach of American troops was given. Knowledge and approval of conditions at the camp cannot be deduced from two visits of the camp before 1939, as the excesses submitted by the Prosecution did not yet exist. Nor did the local proximity of the camp to the Gauleitung of the defendant Sauckel bring about any close connection with the SS staff, as it had its seat in Kassel and Magdeburg.

Finally must be added the inner human convictions of defendant Sauckel which resulted from his previous career, and which was irreconcilable with Himmler's point of view.

What part can defendant Sauckel have played in the conspiracy? He was Gauleiter in Thuringia and did not rise above the rest of the Gauleiters. His activities and his aims can be deduced from his fighting speeches, which have been submitted as Document Sauckel 95. These persistently show the fight for "Liberty and bread" and the desire for a real peace.

For an activity of many years in the Party, the party program was authoritative for defendant Sauckel; the wishes contained therein required neither war nor the extermination of the Jews. The practical realization of the program alone could disclose the reality. For the convinced Party member, however, the official explanation of the event was authoritative and it met with no doubts.

Up to his nomination as the Plenipotentiary General for Labor Commitment in March 1942, defendant Sauckel did not belong to the narrow circle of those who had access to Hitler's plans. He had to rely upon the press and the broadcasts like everybody else. He had no contact with the leading men. This is shown somewhat tragically by his action, so often laughed at, in boarding a submarine as an ordinary seaman for a raid into enemy waters. That is not the way to participate in conspiracies.

As a faithful follower of Hitler, defendant Sauckel remains alone in the circle of those in the know. It is understandable if the extreme men avoided him owing to his well known opinions.

Also he was not initiated into the secret of people who at the same time wished to be both Hitler's friends and murderers and he was not advised by the group of people who were Hitler's enemies, but who kept their truisms secret with a novel kind of courage. Faithful to the end, defendant Sauckel cannot to this day understand what has happened. Must he, like a heretic, recant his error in order to find grace? He lacks the contact with reality which would make understanding possible.

Does the sentence depend on his having unknowingly served a good or a bad cause? Nothing is either good or bad, but thinking makes it so. One thing however is always and under any circumstances good, and that is GOOD INTENTIONS. This good intention was shown by the defendant Sauckel. Therefore, I ask that he be acquitted.

2. FINAL PLEA of Fritz Sauckel

The atrocities revealed in this trial have shaken me in my deepest soul. In our humility and reverence, I bow before the victims and those who died, members of all nations, and before the misery and the sorrow of my own people, according to which I myself will make a statement.

I originate from living conditions of a completely different nature than those of my co-defendants. In my attitude and in my nature I remained a sailor and a worker.

After the first world war, the course of my life was determined through my own experience of the sorrows and needs of my people struggling for their existence. Inner conflict forced me into politics, but I could not agree to the Communist manifesto. I was never antireligious or even Godless. Quite the contrary is true. I fought a hard struggle with myself before I turned to politics.

And so I finally devoted myself to social life and justice and to those whose only wealth was their labor and, at the same time, to the fate of my nation. Herein I saw the only possible connection between a Socialist attitude and a true love of country. This, my belief, determined my life and my actions.

In this way I saw nothing contrary to the laws of humanity. In leadership and in the faith of the followers I saw no arbitrary dictatorship or tyranny. The excesses of my feelings and my confidence, as well as my great veneration of Hitler might have been my mistake. I knew him only as a man representing the rights of life of the German people and saw his kindness towards workers, women, and children, and I knew him as a man who was interested in the life of Germany.

However, the Hitler of this trial I could not recognize. Perhaps a further mistake of mine might have been my loneliness and my submersion into my world of imagination.

I had no social contact with the occupants of high positions in the Reich; the little spare time I had belonged to my family. I was and am proud and happy that my wife is the daughter of a worker, a man who was and remained a Social Democrat.

In this, my last word, I solemnly assure you that all foreign political events and the beginning of all war activities completely surprised me. Under no circumstances would I have cooperated as a German worker—and for German workers—to help plan the madness of an aggressive war.

I only became a National Socialist because I condemned class struggle and civil war, and because I firmly believed in the peaceful way and in the understanding work of Adolf Hitler in rebuilding our country.

In my own sphere of activity I always did everything possible, because I was a worker, to prevent excesses, brutality, and wilful activities of any kind. I was sufficiently naive to carry through my manifest for the commitment of labor, and many other directives, which dictated to all offices a correct and humane treatment of foreign workers. I never would have been able to bear the knowledge of these terrible secrets and crimes without protest, nor, with such a knowledge, would I have been able to face my people or my ten innocent children.

I had no part in any conspiracy against the peace or against humanity, nor did I tolerate murders or mistreatment. During the war I had to do my duty. The task of Plenipotentiary General for Labor Commitment was received by me in a period of grave crisis, and this was a matter of complete surprise to me. I was bound to the then-existing labor laws and to the orders of the Fuehrer, as well as to the directives of the Ministerial Council for Reich Defense. I do not know why it was just I who received this order. In my own Gau I had gained the confidence of the workers particularly, of the peasants and artisans, and already prior to 1933, that is, before Hitler took over the power, with a large majority and in free parliamentary elections, I had been elected as the Chief of the County Government.

I believe that providence has fitted me with a good talent for organization and practical work, as well as with an ability for enthusiasm. That, perhaps, was the reason why I received my task. It was a heavy burden for me. The soil of Berlin was completely alien to me. Just because I am a worker, I never thought of making foreign human beings into slaves. My demand to deal economically with human beings does not in any event mean their inhuman exploitation, but rather their economical and decent use in work and for work.

It was never my intention to commit crimes against international law, against the laws of war, or against the laws of humanity. Not for a single moment did I doubt the legality and admissibility of my task, for I thought it completely out of the question that the German Government would break international law.

If, however, you accuse me of the fact that, in spite of that, German labor laws could not be applied in the occupied territories, then may I reply that people in high positions, Frenchmen, Belgians, Poles, and even Russians, have told me that they were supporting Germany by labor in order to protect Europe against a threatening Communist system, and in order to prevent unemployment and mass suffering during the course of the war.

Not only did I work for the fulfillment of my task with every effort, but, at the same time, I tried with all my might to remove, with all means, the crisis in the organization for the care of foreign laborers, which occurred because of the winter catastrophe during the winter of 1941 and 1942. I tried to eliminate all shortcomings and abuses immediately when I assumed office.

I also believe, as my documents prove, that we could win the foreign workers over to our German cause when giving them correct treatment as I demanded it. Perhaps in the eyes of Himmler and Goebbels I was a believer in a Utopia and quite beyond redemption. They were my opponents, but I fought for equal rights and conditions for foreign workers; I fought for this honestly, so that the same conditions would apply as they applied for the Germans. This is proved by the numerous documents of my defense counsel, and this is confirmed by all the testimony of the witnesses before this Tribunal.

No one can regret it more deeply than I if my work was incomplete. Unfortunately, that was only partly in my power, as was proven by my counsel.

The taking of evidence has shown that many a thing has happened in the occupied territories where the organization of the civilian offices of labor commitment could exercise no influence whatsoever. However, the German offices complained to me; it was claimed that I was delivering too few workers; it was claimed that it was my fault if dangerous crises threatened in the war economy and the food situation. This heavy responsibility and this care dominated me in such a way that I had no time for other events, and I regret that fact.

So far as my decrees and directives and my officials are concerned, I accept the responsibility. I have never seen the records of the Central Planning Board before this trial; otherwise, I certainly would have corrected false or unclear passages, as, for instance, the passage with reference to the impossible figure of only two hundred thousand volunteer workers. This also applies to a number of other statements of mine which were taken down by a third party, quite wrongly and without my ever having made these statements.

Just because I am a worker, just because I served on foreign ships, I am grateful to the foreign workers who worked in Germany, for they worked well. This, perhaps, may be a proof of the fact that on the whole they were treated correctly and humanely. I myself visited them many times, for I was a working man; and because of the fact that I was a working man I spent the Christmas holidays of 1943 and 1944 among foreign workers in order to show my attitude towards them.

My own children worked in the factories in the midst of foreign workers, and they worked under the same working conditions. Could I, or German workers and the German people, consider that as slavery? This was a war necessity. The German people and the German workers would never have tolerated conditions comparable to slavery next to themselves.

My defense counsel, very ably and objectively, has submitted my case in complete truth. I thank him from my full heart for that. He was strict, and quite correct, in his presentation of my case. It was my wish and my conscience.

There are clear shortcomings, and the need which arose because of the war, the horrible conditions of the war, touch my heart.

I personally am ready for any fate which providence intends for me, and I am ready to meet that fate, as my son who died during the war did.

The Gauleiters whom I made Plenipotentiaries for Labor Commitment had only one task, to mete out correct treatment and care to the Germans and to the foreign workers.

God protect my beloved people, above all, and may the Lord bless the work of German workers, for whom I have lived and struggled, and may he give peace to the world.

XVIII. ALFRED JODL

1. FINAL ARGUMENT by Dr. Franz Exner, Defense Counsel

Mr. President, may it please the Tribunal!

In this unique trial the finding out of the truth is faced by unique difficulties. At a time when the wounds of the war are still bleeding, when the excitement at the events of the last few years is still to be felt, at a time when the archives of one side are still shut, a just verdict is to be given with dispassionate neutrality. Material for the trial has been spread out before us which covers a quarter of a century of world history and events from the four quarters of the globe. And on the basis of this gigantic material we see 22 men being accused simultaneously. That makes it terribly difficult to keep one's eyes clear for the guilt and responsibility of each individual. For inhumanities of an almost unimaginable vastness have come to light here, and the danger exists that the deep shadow which falls on some of the defendants may also darken the others. Some of them, I fear, appear in a different light, owing to the company in which they are here, than if they were alone on the defendants' bench.

The prosecutors have increased this danger still more by repeatedly making communal accusations, mixing legal and moral reproaches. They said that all the defendants had enriched themselves from the occupied territories, that there was not one who did not shout "die Juda," etc. No attempt to prove this in the case of each individual was made but the statement alone already creates an inimical atmosphere to all of them.

One of the things that comes under these actions by the Prosecution which make the clearing up of the question of individual guilt more difficult is the fact that the defendants Keitel and Jodl are treated as inseparable twins, one common plea against them by the British prosecutor, one common trial brief by the French prosecution. And finally the Russian prosecution spoke very little about the individual defendants, but heaped reproach after reproach upon all the defendants. All this is clearly intended to shorten the trial, but hardly serves to clear up the question of individual responsibility.

Indeed, the Indictment goes still further. It stretches beyond these 22 defendants and affects the fate of millions. This through the prosecution of the organizations, which, taken in conjunction with law No. 10, has as its result that one can be punished for the guilt of other persons. Finally, a thing that is more important at the moment is a further form of the summary treatment of the defendants. The Prosecution is bringing in the conception of a "conspiracy" to reach the result again that persons can be made individually responsible for something wrong that others did. I must go into this point in greater detail, as it concerns my client too. It is actually clear, I think from the previous speaker's statements that a conspiracy to commit crimes against the peace, the laws of war and humanity did not in fact exist, so I shall only show one thing, if such a conspiracy did actually exist, Jodl at least did not belong to it.

The prosecutor admitted that Jodl's participation in the conspiracy before 1933 could not be proved. And, in fact, anyone whose attitude toward the whole National-Socialist movement was so mistrustful and who spoke with such sceptical reserve about its seizure of power (witness General v. Vermann) did not conspire to help Hitler into the saddle.

But the prosecution seems to think that Jodl joined the alleged conspiracy in the period before 1939. In fact, during this time too nothing essential changed for him.

Actually his attitude toward Hitler was now a lawfully loyal one, for it was Jodl's respected Field Marshal von Hindenburg, who had called Hitler to the government, and the German people confirmed this decision with over 90 percent of its votes. Added to this was the fact that in Jodl's eyes, and not only Jodl's, Hitler's authority was bound to rise powerfully in view of his marvelous successes at home and abroad, which now followed one another in quick succession. But personally Jodl remained without any connection with Hitler. He did not participate in any of the big meetings at which Hitler developed his program. His book "Mein Kampf," the Bible of National Socialism, he only read parts of. Jodl just remained an unpolitical man in accordance with his personal inclinations, which lay far from party politics, and in accordance with the traditions of the old family of officers from which he sprang. Inwardly of liberal leanings, he had little sympathy for National Socialism, outwardly he was forbidden, as an officer, to belong to the party and he was forbidden all rights to vote and all political activity.

If, as the Prosecution says, the party held the conspiracy together and was the "Instrument of Cohesion" between the defendants, then one asks in vain what cohesion existed between Jodl and—let us say—Sauckel, or between Jodl and Streicher. Of all the defendants, except the officers, the only one he knew before the war was Frick from one or two official conferences in the Ministry of the Interior.

He kept out of the NSDAP and his attitude toward its organizations was even in some sense inimical. His greatest worry during those years—as later right to the end—was the danger of party influences in the armed forces. Jodl did what was in his power to prevent the SS being "puffed up" into a subsidiary Wehrmacht to prevent the handing over of the customs frontier guards to Himmler, and he notes triumphantly in his diary that, after the withdrawal of Col. Gen. Baron von Fritsch, Hitler did not, as was feared, make Gen. von Reichenau, who had party ties, commander-in-chief of the army, but the unpolitical Gen. von Brauchitsch, etc. If Jodl had conspired for National-Socialism in any way, he would have behaved in the opposite manner on each of these points.

Jodl was also not present at any of the so-called "meetings of conspirators." Neither on the 5 November 1937 (Hitler's testament remained unknown to him) nor at the Obersalzberg in February 1938, nor at the meeting on the 23 May 1939, or the 22 August 1939. No wonder! Jodl was, after all, at that time still much too small a man to be brought in on occasions which were of such decisive importance to the state. People don't conspire with lieutenant colonels or colonels on the general staff; they are simply told what they are to do, and that settles the matter as far as they are concerned.

However the most incontrovertible proof that Jodl can have belonged to no conspiracy to wage aggressive war is his 10 months' absence just before the war began. Jodl had left the OKW in October 1938 and was sent to Vienna as an artillery commander. At that time there was, in his view, so little probability of a war that before leaving Berlin he drafted, on his own initiative, a covering deployment in all directions. In this he moved the mass of the German forces to the center of the Reich, because he could not see any, in any way, definite opponent against whom a deployment plan would have had to be prepared. Exactly a year before the beginning of the attack, this alleged conspirator for aggressive wars drew up a purely defensive general staff job. And although he knew definitely that in case of war he would have to return to Berlin, this possibility seemed to him to be so distant that he transferred to Vienna with all his furniture. And still further, as he wished to get away from office work again at last, he had the mountain division at Reichenhall promised him for the 1 October 1939. And lastly, as late as July he got himself shipping tickets for a sea trip planned to last several weeks, which was to have begun in September. So sure was he of a peaceful further development.

During these 10 months up to the time he was called to Berlin shortly before the outbreak of war, Jodl had no official or private connections with the OKW. The only letter he got from them at that time was the one which promised him his transfer to Reichenhall on 1 October. Note that at the most critical time, at the very time when the alleged conspirators were discussing and working out the Poland plan, Jodl was out of all contact for 10 months with the authoritative persons and knew no more of what was happening than one of his second lieutenants. When the Fuehrer came to Vienna during this summer, it did not even seem worth while to Keitel to introduce Jodl to him, although Jodl was called upon in the event of war to carry out the alleged common aggressive plan as strategic advisor to the Supreme commander. One can imagine how astonished Jodl was to read in the Indictment that he had been a member of a conspiracy to launch the war.

But perhaps it is asserted that Jodl only joined the conspiracy after 1939.

As a previous speaker has already explained, an officer who cooperates in the place indicated for him in carrying out a war plan can never be considered a conspirator. He does in fact have a plan in common with his superior, but he has not adopted it willingly, nor has he concluded an agreement, but, within the normal order of service, he simply does what the post he occupies demands.

Jodl can be considered a typical example of this. He did not go to Berlin on his free decision. It had already been laid down long before that he had to enter the Fuehrer's staff in case of war. The arrangements for the current mobilization year laid this down. This mobilization year ended on the 30 September 1939; for the following year Gen. von Sodenstern was already designated as Chief of the Wehrmacht Operational Staff. So if the war had broken out 6 weeks later, Jodl would have entered the war as commander of his mountain division. He would then in all probability not be on this defendant's bench today. One sees that his whole activity in the war was fixed by a ruling which was independent of his will and had been laid down in advance long before. This fact is, in my opinion, in itself already striking proof that he did not participate in a conspiracy to wage wars of aggression.

When Jodl reached Berlin on 23 August 1939, the beginning of the war had already been laid down for 25 August. For reasons unknown to him it was then postponed another 6 days. The plan for the Polish campaign lay ready. He did not need to conspire to produce it. If a conspiracy against Poland existed at that time, the co-conspirators were quite somewhere else, as we now know as a result of the secret German-Russian treaty.

Jodl was not introduced to the Fuehrer until 3 September 1939, i.e., only after the war had begun, at a time when what had to be decided had already been decided.

From then on his official position brought him close to Adolf Hitler. One must actually add, close to him physically only. He was never really close to him. Now, too, he did not learn Hitler's plans and intentions, and was only let into them as the occasion arose to the extent that his work absolutely demanded. Jodl never became Hitler's confidant and never had cordial relations with him. It remained a purely official relationship and often enough one of conflict.

In other ways too, Jodl had remained a stranger to the party. There is no idea of his having sought contact in Vienna, for instance, with the party leaders there, although this would have been natural enough.

Most of the party leaders and most of the defendants he came to know only when they visited the Fuehrer's headquarters from time to time. With the exception of the officers, he continued to have no relations with them. The party clique in the headquarters he hated and considered it an unpleasant foreign body in the military framework. He never ceased to fight against party influences in the armed forces.

He still did not participate in party functions. He did not participate in Reich party rallies, apart from the fact that he once watched the Wehrmachts' exhibition there, having been ordered to officially. He avoided every one of the Munich anniversaries on 9 November.

The prosecutor repeatedly brought in his Gauleiter speech to prove that, in spite of all this, Jodl identified himself with the party and its efforts, that he was after all not a soldier but a politician, and that he was an enthusiastic supporter of Hitler's.

Here one must first note, the document L–172 which is presented to us as this Gauleiter speech is not the manuscript but a collection of materials put together by his staff, on the basis of which Jodl then drafted his manuscript. Over and above this, the speech was made extemporaneously; not a single word of this document proves that Jodl really spoke it.

Also the occasion of the speech must be taken into account. After four hard years of war, after the breaking off of Italy which had just taken place and before the fresh, terrific burden which Hitler planned to impose on the population as the extreme effort—at this critical moment everything depended on the peoples' will to continue remaining intact. For this reason, the party tried to get expert information upon the war situation so as to be able to buoy up the sinking courage again. For this task the Fuehrer earmarked General Jodl, no doubt the only competent person. Some people would have welcomed this opportunity to make themselves popular with the Party leaders, but Jodl accepted the task against his will. The title of the lecture is "The military situation at the beginning of the fifth year of the war." Its contents are a purely objective description of the war situation on the various fronts and of how this situation was created. The beginning and the end give—at least according to the document before us—a paean of praise to the Fuehrer from which the Prosecution draws doubtful conclusions. When a lecturer has first and foremost to win the confidence of his listeners, these consisting of Party leaders, and when his task is to spread confidence in the supreme military leadership, then such rhetorical phrases are something quite understandable.

Besides, Jodl does not deny that he sincerely admired some of the Fuehrer's qualities and talents. But he was never his confidant or his fellow conspirator and he remained in the OKW too the nonpolitical man he always was.

Jodl was therefore not a member of a conspiracy. No concept of a conspiracy can help to make him responsible for actions which he did not himself commit as a guilty man.

And now I will deal with these individual actions with which Jodl is reproached.

According to Article 6 of the Charter, the Tribunal is competent to deal with certain crimes, against the peace, against the Laws of War, and against humanity, which crimes are specified in the Charter, and for which the personal criminal responsibility of the guilty individual was laid down. If we disregard for the time being the crimes against humanity, which come under a special heading, there are two preliminary conditions under which the individual punishment of the defendant can take place.

1. There must be a violation of international law of which they were co-guilty in some respect. The meaning of this whole trial and the meaning of the Charter after all lies in the fact that the force of the rules of international law is to be strengthened by penal sanctions. If, therefore, some special kind of violation of international law is committed, not only the responsibility of the particular country which violated the law will come in as heretofore, but in addition guilty individuals are also to be punished for it in future. Therefore, there can be no punishment without a breach of international law.

2. But provision is not made for such a responsibility of individuals in the case of all breaches of international law, but only

for those which are explicitly named in the Charter. Article 6 a specifies the crimes against peace, paragraph b crimes against the laws and usages of war. Other actions, even if they are contrary to international law, do not belong here.

Quite a few court sessions could have been saved if the Prosecution had taken these two points into account right from the beginning. Because as is to be shown yet—there is a tendency to accuse the defendants beyond these limits of actions contrary to international law which are not specified in the Charter; but this is not all, they are to be called to account also for deeds which are not at all contrary to law, but which can at most be considered as inethical.

In the following points I stick to the clear arrangement of the Anglo-American trial brief and add to it what was brought up against Jodl by the two other prosecutors.

Point 1, the collaboration in the seizure and consolidation of power by the National-Socialists has—as already pointed out—been dropped.

Points 2 and 3 concern rearmament and the reoccupation of the Rhineland. Jodl had nothing to do with the introduction of general compulsory military service nor with rearmament.

Jodl's diary contains not a single word about rearmament. He was a member of the Reich Defense Committee, which was not, however, concerned with rearmament questions. He was here concerned with the measures which were to be taken by the civil authorities in case of mobilization. There was nothing illegal in that. We were not forbidden to mobilize, for instance, in case of an enemy attack. The preparations in the demilitarized zone which were proposed to the committee by Jodl limited themselves also to the civil authorities and consisted only of preparation for the evacuation of the territory west of the Rhine in order to defend the line of the river Rhine in case of a French occupation. The preparations were purely of a defensive nature.

If, in spite of that, Jodl recommended that these defensive measures be kept very strictly secret this is not evidence of any criminal plans, but only the natural thing to do. As a matter of fact, particular caution was imperative, for the French occupation of the Ruhr was still fresh in peoples' memory.

Neither had Jodl anything to do with the occupation of the Rhineland. He learned about it only five days before the execution of this decision of the Fuehrer's. Further statements are superfluous for according to the Charter neither rearmament nor the occupation of the Rhineland—whether they were contrary to international law or not—belong to the criminal actions under Article 6.

These cases would come under the Charter only if a preparation for aggressive war was seen in them. But who would have thought of an aggressive war at that period? In 1938, owing to lack of trained troops, we could not have put into the field one sixth of the number of divisions our expected enemies, France, Czechoslovakia, and Poland could have produced. The first stage of rearmament was supposed to be reached in 1942, the Western Wall was to be completed by 1952, heavy artillery was lacking entirely, the tanks were at the testing stage, the ammunition situation was catastrophic. In 1937 we did not possess a single capital ship, as late as 1939 we did not have more than 26 seagoing U-boats, which was less than one tenth of the British and French figure. As far as war plans are concerned there existed only a plan for the protection of the Eastern frontier. The description of our situation in the Reich Defense Committee is very typical, it was said, in a matter of fact way, that a future war would be fought on our own territory, hence that it could only be a defensive war. This—please note—was a statement made during a secret session of this committee. The possibility of offensive action was not mentioned at all. But we were then not capable of serious defensive action either. For this very reason the generals thought of themselves as gamblers already at the time of the occupation of the Rhineland. But that any one of them could have been sufficiently utopian to think of an offensive, there is not even the semblance of any evidence for thinking.

As Points 4–6 the Trial brief designates "Participation in the planning and execution of the attack on Austria and Czechoslovakia."

a. A deployment plan against Austria did not exist at all. The prosecution quoted the Document C–175 as such. But this is a misunderstanding. It is a program for the elaboration of the most various war plans, for instance for the war against England, against Lithuania, against Spain, etc. Among these theoretical possibilities of war, the "Fall Otto" is also mentioned, i.e., an intervention in Austria in case of an attempt to restore the Hapsburgs. It says in the document that this plan is not to be elaborated but merely to be "thought out." But, as there was no indication whatsoever of such an attempt by the Hapsburgs, nothing at all was prepared for this.

Jodl did not attend the meeting on 12 February 1938 at Obersalzberg. Two days later came the order to propose certain deceptive actions, obviously in order to put pressure on Schuschnigg so that he should comply with the Obersalzberg agreements. There is nothing illegal in this, even if the prosecutor speaks about "criminal methods."

Jodl was completely surprised 2 days before its execution by the Fuehrer's decision to march in. The Fuehrer gave this order to march in by telephone. Jodl's written order served only to file it. If this had been the authoritative order, it would after all have come much too late. It was issued at 0900 hours on 11 March and the march in took place on the following morning. Its course was described to us. The troops had purely peacetime equipment. The Austrians crossed the border to meet and welcome them. Austrian troops joined the columns and marched with the German troops to Vienna. It was a triumphal procession with cheers and flowers.

b. The case of Czechoslovakia follows:

As late as the spring of 1938 Hitler stated that he did not intend "to attack Czechoslovakia in the near future" (*388–PS of 30 May 1938*). After the partial Czech mobilization, which was unprovoked, he changed his view and decided to solve the Czech problem after 1 October 1938, and not on 1 October 1938, as long as there was no interference to be expected from the Western Powers. Jodl was therefore to make the preparations concerning the General Staff. He did it in the conviction that his work would remain theoretical because—as the Fuehrer wanted under all circumstances to avoid a conflict with the Western Powers—a peaceful settlement was to be expected. Jodl tried to achieve only one thing—that the plan should not be interfered with by Czech provocation. And really things happened as he expected they would. After the examination by Lord Runciman had shown the untenableness of the racial conditions in Czechoslovakia and the justification of the German national point of view, the Munich arrangement with the Western Powers took place.

Jodl is reproached with having proposed in a memorandum that an incident might be "organized" as a motive for marching in. He has given us the reasons for it. But the incident did not take place. This memorandum is not a breach of international law, even if only because it is a question of internal considerations which never achieved importance outside. And even if this idea had been put into execution, such guiles have always been used, ever since the Greeks built their Trojan Horse. Ulysses the initiator of this idea is praised for this by the ancient poets as "a man of great cunning" and not branded as a "criminal." I do not see anything unethical in Jodl's behavior either, for, after all, in the relations between states somewhat different ethical principles are applied from those in boarding schools for young Christian girls.

c. The occupation of the Sudetenland itself was carried out just as peacefully as that of Austria. Greeted enthusiastically by the liberated population, the troops entered the German areas, which had been evacuated to the agreed line by the Czech troops. Both these marchings in are not crimes according to the Charter. They were not attacks (this presupposes the use of force) still less wars (they presuppose armed fighting), let alone aggressive wars. To consider such peaceful invasions as "aggressive wars" would be to exceed even the notorious conclusion based on analogies of National-Socialist criminal legislation. The four signatory powers could have included these invasions, which were still a recent memory, in Article 6, but this was not done because it was obviously intended to restrict the completely new kind of punishment of individual persons to wars, but not to penalize such unwarlike actions. Generally speaking, it must be said, any interpretation of the penal rules of the Charter which extends them is inadmissible. The old saying applies "privilegia stricte interpretenda sunt." Here we have an example of privilegium odiosum. Indeed there has probably never been a more striking example of a privilegium odiosum than the unilateral prosecution of members of the Axis Powers only.

Now one could also get the idea of making Jodl responsible for having drafted an invasion plan against Czechoslovakia at a time when a peaceful settlement was not yet ensured. But Jodl reckoned with a peaceful settlement and had good reason to expect it. He therefore lacked the intention of preparing an aggressive war.

To this statement of facts which exclude Jodl's guilt must be added a legal consideration. We have decided—and there should be no doubt about it—there is no punishment for crimes against the peace without a violation of international law. Now if the Charter makes preparations for aggressive war subject to punishment, it clearly means that a person who prepared an aggressive war which actually took place should be punished. On the contrary, war plans which remained nothing but plans do not belong here. They are not contrary to international law. International law is not concerned with what goes on in peoples' heads and in offices. Things which are immaterial from the international point of view are not contrary to international law. Aggressive plans which are not executed in the same way as mere aggressive intentions may be unethical, but they are not contrary to law and do not come under the Charter. It is here a question of plans which were not carried out because the peaceful occupation of the

Sudetenland based on international agreement was not an aggressive war, and the occupation of the rest of the country, which furthermore was accomplished without resistance and without war, no longer had any connection with Jodl's plans.

This occupation of the rest of the Czechoslovak territory in March 1939 need not be discussed in greater detail here, for Jodl was at the time in Vienna and did not take part in this action. Neither did he have anything to do with its planning. For it has no connection whatsoever with Jodl's former work in the General Staff. Since then the military situation had changed completely. The Sudetenland with its frontier fortifications was in German hands. The unopposed march which then took place, therefore followed totally different plans, if such plans existed at all. Jodl did not take part in this march in itself.

Point 7 of the Trial brief regards war tension against Poland. The essential things have already been said on this subject. At the moment when Jodl left Berlin, no deployment plan against Poland existed; when he returned on 23 August 1939 the intention existed to enter Poland on the 25th. The plan for this was naturally ready, Jodl did not have a share in it.

The prosecution stresses further that Jodl was present in Poland in the Fuehrer's train on 3 September and that this was a proof that he took part in the war. Is this too a reproach against a soldier?

Point 8 of the Trial brief concerns attacks on the seven countries from Norway to Greece. The Trial brief gathers these seven wars together into one point—quite rightly too. They form one unit, because all of them resulted with military necessity and with logical consequence from the Polish war and from England's interference. It is for this very reason that the fact that Jodl had nothing to do with the unleashing of the war against Poland is so important when judging him.

The historians will have to do a lot more research work before it is known how everything really came about. The only criterion for the judgment of Jodl's behavior is how he saw the situation at its various stages, whether, according to that what he knew, he considered Hitler's various decisions to wage war justified and to what extent he influenced developments. That is all that we are concerned with here.

In reference to the statements made by Dr. Siemers in this regard day before yesterday, in order to avoid any misunderstanding I should like to add the following:

1. There is not the slightest doubt that the merchant ships of a state at war may cross the neutral coastal waters. If its enemy, in

order to prevent any traffic of that sort, mines the coastal waters, this fact is a clear breach of neutrality. Capital ships and battleships have the right of passing through, in so far as they adhere to the rules which have been stipulated and do not participate in any combat action in the coastal waters. And if this applies even to capital ships and battleships, it applies all the more so to ships who are transporting prisoners of war.

2. The fact that a war is a war of aggression does not in any way influence the validity and application of the normal war and neutrality right. A contrary opinion would lead to absurd results and would serve only to become a grave digger for the complete right of war. There would be no neutral states, and the relations between the belligerents would be dominated and determined by the principles of brute force and its applications. Each shot would be murder, each instance of capture would be punishable deprivation of freedom, and each bombardment would be a criminal material damage.

This war, in any event, was not carried on or conducted along such principles by either side, and even the Prosecution does not uphold the point of view. Nor does the Prosecution maintain this point of view, otherwise they would not have charged the defendant with certain deeds as being crimes against the laws of war and neutrality laws. The entire reproach under point three would be quite senseless and not understandable. And apart from that, Prof. Jahrreiss dealt with this question on pages 32 to 35 of his final argument.

a. Norway—Denmark. Jodl heard for the first time in November 1939—and this from Hitler himself—about the fears of the German navy that England intended to go to Norway. He then received information which left no doubt that these fears were basically right. He also had regular reports according to which the waters near the Norwegian coast were coming more and more into the English sphere of domination so that Norway was no longer neutral.

Jodl was firmly convinced—and still is to-day—that the German troops prevented the English landing at the last minute. No matter how Hitler's decision may be judged legally Jodl did not influence it. He considered the decision justified and was bound to consider it as such so, even if one wished to regard Hitler's decision as a breach of neutrality, Jodl did not give criminal help by his work on the General Staff.

b. Belgium—Holland—Luxemburg. Like every military expert, Jodl knew that if Germany was to fight the war in the West to its conclusion, there was no other course but a military offensive. In view of the inadequacy of the German equipment at the time and the strength of the Maginot-line, there was, however, from a military point of view, no other possibility for an offensive than through Belgium.

So Hitler was, for purely military reasons, faced by the necessity of operating through Belgium. But Jodl also fully knew, as did every German who experienced August 1914, how difficult a political decision was faced thereby as long as Belgium was neutral, i.e., was prepared and in a position to keep out of the war.

The reports which Jodl received and against the accuracy of which no justified doubts could arise now showed that the Belgian Government was already cooperating in breach of her neutrality with the general staffs of Germany's enemies. This, however, can be dropped here in the defense of Jodl. It suffices to know—and this is incontrovertible—that part of Belgium's territory, i.e., the air over it, was being continuously used by Germany's Western enemies for their military purposes.

And this applies perhaps even more strongly to the Netherlands. Since the first days of the war, British planes had flown over Dutch and Belgian territory as and when they pleased. Only in some of the numerous cases did the Reich government protest, and these were 127 cases.

The Prosecution does not put the legal question correctly. Because air warfare gained its present important position, conditions were such that a state which wished to remain neutral could withhold its territory from continual military use by one of the belligerents as and when the latter wished, or else give clear notice of the termination of its neutrality. Since air warfare became possible, a state can hand over, or have to hand over, to one of the belligerents the air over its territory, and yet remain outwardly and diplomatically neutral. But, by the very nature of the idea, the defense of its neutrality can be claimed only by a state whose whole territory lies de facto outside the theater of war.

The Netherlands and Belgium were long before that 10th of May no longer de facto neutral. For the air over them was, in practice with or against their will, freely at the disposal of Germany's enemies. What contribution they thus made toward England's military strength, i.e., towards the strength of only one of the belligerents, is known to everybody. It is necessary only to think of Germany's Achilles' heel—the Ruhr.

Our adversaries clearly maintained the point of view that, when the barrier constituted by Holland and Belgium protected our industrial areas against air attack, their neutrality was to be disregarded; but when it protected France and England, its violation was a crime.

Jodl naturally realized the situation. His opinion on the legal question was, of course, a matter of complete indifference to Hitler. His activities remained here too the normal activities of a General Staff officer.

c. Greece. Hitler wanted to keep the Balkans out of the war, but Italy had attacked Greece against his will at the beginning of October 1940. When the Italians got into trouble a request was made for German help. Jodl advised against it, since then English intervention in the Balkans would have to be reckoned with and every hope of localizing the Italo-Greek conflict would thus be lost. Hitler then ordered everything to be prepared for the necessity which might perhaps nevertheless arise, if German help for Italy against Greece became inevitable. (Orders of 12 November and 13 December 1940.)

If the attempt to localize the Greek-Italian conflict did not succeed, it was clear that Greece would be involved in the great German-English struggle. The question was now whether her territory would lie within the war zone controlled by the British or the Germans. And as, in the case of Norway, Belgium, and Holland, part of the territory of these countries was already at England's disposal before the beginning of open hostilities and they were therefore, de facto at least, no longer neutral—perhaps could no longer be neutral—so it was also with Greece now. The Prosecution on Greece establishes that British troops were landed on the Greek mainland on 3 March 1941 after Crete had already some time before come within the area controlled by the British. Hitler did not give permission for aerial warfare at Crete until 24 March 1941 and began the land attacks only on 6 April.

Here too Jodl had no influence on Hitler's decisions. He could have no doubt that Hitler's decision was inevitable as the war between the world powers was now developing. There was no choice; ever increasing parts of Greek territory would have been drawn into the sphere of English power and would have become the jumping-off points for bombing squadrons against the Roumanian oilfields had Germany not stopped this process. Moreover, the experiences of the first world war were frightening; the coup de Grace was then made from Salonica.

d. Yugoslavia. Hitler wanted to keep Yugoslavia out of the war too. The German troops in the Balkans had the strictest orders to respect its neutrality rigorously. Hitler even declined the application by the Chief of the Army General Staff to ask the

Yugoslav Government for permission to let sealed trains with German supplies through their territory.

The Simovic putsch in Belgrade on the night after Yugoslavia joined the Tripartite pact was considered by Hitler as a malicious betrayal. He was of the opinion that the change of Government at Belgrade, which altered the course of its foreign policy 180°, was only possible if England or the Soviet Union or both had provided cover from the rear. He was now certain that the Balkans would be fully drawn into the war tangle. He was certain that the German troops in Bulgaria were directly threatened and also the German line of communication which ran close to the Yugoslav frontiers.

Under these conditions, Hitler took the decision for war on the morning following the Belgrade putsch. Jodl's suggestions, and later Ribbentrop's too, to make things unambiguous by means of an ultimatum, were not considered at all. He wanted to make sure that Yugoslavia and Greece should not come into the sphere of influence of England but into that of Germany. The next day's news concerning Moscow's telegram of friendship to the Belgrade putsch government and about the Yugoslav deployment then already in progress (confirmed by the statement of General von Greiffenberg, Doc. book III. A. J. 12 (Jo.65)), and lastly the Russo-Yugoslav Friendship pact were for Jodl irrefutable signs that Hitler had seen the connection of events correctly.

The decision to fight was taken by Hitler, and by Hitler alone.

Point 9 concerns the aggression against the Soviet Union. What each of the two Governments, that of Berlin and that of Moscow, wished to achieve by the agreement of the 23 August 1939 is to-day not certain. One thing is, however, certain and that is that these partners who were up till then enemies had not entered into a marriage of love. And the Soviet Union was for the German partner a completely mysterious quantity. And it remained so too. Anyone who does not consider this fact can in no way judge Hitler's decision to make a military attack on the Soviet Union, and above all the question of guilt.

If anywhere, it was in the Russian question that Hitler came to a decision without listening to the slightest advice from anyone to say nothing of taking it. He wavered for many months in his opinion about the intentions of the Soviet Union.

The relations of the armies of both sides on the demarkation line were from the very beginning full of incidents. The Soviets at once occupied the territories of the Baltic States and of Poland with disproportionately strong forces.

In May and June 1940, when there were only five to six German covering divisions in the East, the Russian deployment against Bessarabia with at least 30 divisions reported by Canaris and the deployment into the Baltic territory caused great anxiety. On 30 June, 1940 apprehensions were again allayed so that Jodl—as the Document 1776–PS has shown—even thought that Russia could be counted on as a helper in the fight against the British Empire. But in July there were renewed worries. The Russian influence was advancing energetically in the Balkans and the Baltic territories. Hitler began to fear Russian aggressive intentions as he told Jodl on 29 July.

The sending off of several divisions from the West, where they were no longer required, actually had nothing to do with this. It occurred at the request of the Commander-in-Chief in the East who could not fulfil his security task with his weak forces.

Hitler's worry concerned above all the Rumanian oilfields. He would have liked most to eliminate this threat already in 1940 by a surprise action. Jodl replied that, owing to the bad deployment possibilities in the German Eastern territories, this could not be considered before winter. Hitler demanded verification of this opinion. Jodl arranged for the necessary investigations in a conference with his staff in Reichenhall, which was obviously misunderstood by the Russian prosecution. On 2 August Hitler ordered improvements to be made in the deployment possibilities in the East, a measure which was no less indispensable for defense than for an offensive.

Toward the end of August—this is the order of 27 August—10 infantry divisions and 2 panzer divisions were brought into the Government-General in case a Blitz action should become necessary for the defense of the Rumanian oilfields. The German troops, now totalling 25 divisions, were certainly intended to appear stronger than they really were so that an action should be unnecessary. This is the sense of Jodl's order for counter-espionage (*1229–PS*). Had there been aggressive intentions then there would rather have been an attempt to make one's own forces appear smaller than they were.

At the same time Hitler appears to have given the General Staff of the army orders, without Jodl knowing anything about it, to prepare an operational plan against Russia for any eventuality. In any case, the General Staff of the army worked on operational plans of this kind from 1940 onward (General Marcks and then General Paulus).

Unfavorable information then accumulated after the Vienna award on 30 August 1940. If Jodl was to believe his utterances, Hitler was becoming convinced that the Soviet Union had firmly resolved to annihilate Germany in a surprise attack while she was engaged against England. The leaders of the Red Army had (according to a report of 18 September) declared a German-Russian war to be inevitable (*C–170*). In addition, reports came in of feverish Russian preparations along the demarcation line. Hitler calculated on a Russian attack in the summer of 1941 or winter of 1941–42. He thus decided, should the discussions with Molotov not clear up the situation favorably, to take preventive steps. For then the only chance for Germany lay in offensive defense. For this case of emergency, preparatory measures were ordered by Hitler on 12 November 1940 (*444–PS*).

The failure of the discussions with Molotov decided the question. On 18 December 1940 Hitler ordered the military preparations. Should the coming months clear up the situation, all the better. But it was necessary to be prepared in order to deliver the blow in the spring of 1941 at the latest. This was presumably the latest possible moment, but also the earliest, since more than four months were required for the deployment.

Jodl, as an expert, emphatically pointed out to Hitler the enormous military risk, the undertaking of which could be decided upon only if all political possibilities of averting the Russian attack were really exhausted. Jodl came to the conclusion at that time that Hitler has exploited every possibility.

The situation grew worse. According to the reports which were received by the army General Staff at the beginning of February 1941, 155 Russian divisions, i.e., ⅔ of the total Russian strength known to us, had deployed opposite Germany. But the first stage of the German deployment had just begun.

The Government's telegram of friendship to the participants in the Belgrade putsch on 27 March 1941 destroyed Hitler's last hope. He decided upon an attack, which actually had to be postponed for more than a month owing to the Balkan war.

The deployment was undertaken in such a manner that the fast German units, without which the attack could not be conducted at all, were brought to the front only in the last two weeks, i.e., after 10 June.

Real preventive war is one of the indispensable means of self-preservation and was indisputably permitted according to the Kellogg-Briand pact. The "Right of Self-Defense" was understood thus by all the signatory states.

If the situation was wrongly conceived, the German military leaders are not to be blamed for their error. They had reliable reports on Russian preparations which could only have sense if they were preparations for war.

The reports were later confirmed. For when the German attack met the Russian forces, the leadership of the German front got the impression of running into a gigantic deployment against Germany. General Winter developed this here in detail in addition to Jodl's statements, particularly with regard to the enormous number of new aerodromes near the line of demarcation, and he drew particular attention to the fact that the Russian staffs were provided with maps of German territories. Field Marshal von Rundstedt also confirmed this as witness before the commission. This will come before the court during the further course of the trial.

Jodl firmly believes that Hitler would never have waged war against Russia unless he had been absolutely firmly convinced that no other path lay open for him at all. Jodl knew that Hitler knew the danger of a two-front war fully and would risk the victory over England—which he thought was no longer in doubt—only in an inescapable emergency.

Jodl only did his job as an officer of the General Staff. He was convinced, and still is to-day, that we were waging a genuine preventive war.

Point 10 finally brings the war against the USA. That Jodl did not intend to increase the number of our enemies by a world power is obvious, and also shown by documents.

Now what is the position with regard to the responsibility for these campaigns? A declaration of war is a decision in the field of foreign politics, the most important one in the whole of this field.

It depends on the constitutional structure of the concrete state as to who is responsible for this decision—politically, criminally, and morally; it depends on the way the formation of a will in the field of foreign politics takes place in this state according to its constitution. Prof. Dr. Jahrreiss has spoken about this. In the Fuehrer state it is exclusively the Fuehrer who has to make this decision. Anyone who advises him about this cannot be responsible, for, if what the Fuehrer orders has legal force, he who influences this order can not be acting illegally.

The Charter is obviously of the opinion that those who in any way participated in the Fuehrer's decision or influence it are also co-responsible. If we take this legal conception as authoritative, the question of responsibility crystallizes into a problem of competence.

In every community the spheres of tasks of its organs must be delimited, there must be rulings on competence laying down what each official is called upon to do and not to do. Thus in all states the relations between the military and the civil administration is naturally regulated, as also within the military and within the administration the spheres of tasks and the relations between their thousands of offices are regulated. If things were otherwise, chaos would reign.

Particularly in wartime the problem of competence in the relations between the political and military leadership is important. For the military is the most important instrument of policy and the assistant may easily try to become master—the military interfere in politics. It was a German tradition to avoid this. The Bismarckian empire already tried with great consistency to keep officers away from politics. They had no right to vote, were not allowed to go to political meetings, and in fact any statements on politics were looked upon askance. For it could in some way be looked upon as a taking of sides, whereas the taking of sides was severely banned. The military were to be politically blind, completely neutral, and knowing only one point of view, which was that of legitimacy, i.e., subordination to the legitimate ruler. Thus in the years 1866 and 1870, when there was danger of war, it was not Moltke but Bismarck who advised the King as to the political decision. This changed during the last years of the first World War. General Ludendorff became the strongest man in the Reich owing to the force of his personality and the weakness of his political opponents. People often talk of German militarism. For the time when the soldier seized political power this was justified. The Weimar State got rid of this completely. The non-political character of the armed forces was stressed with all sharpness and the military again limited to its particular field. This went so far that a civilian was made minister for war, who had to represent the armed forces politically in the Reichstag. For the longest time it was a Liberal-Democratic minister who was meticulously careful to avoid all political influence by the generals.

When founding the Wehrmacht, Adolf Hitler maintained this sharp distinction between politics and military, indeed he even stressed it in a certain sense. He, who wished to make the whole people politically minded, wanted a non-political Wehrmacht. The soldier was deprived of political rights, he was not allowed to vote or to belong to any party, even the NSDAP (as long as the old law on compulsory military service was in force). He also consistently kept his generals and highest military advisers away from any interference in political requirements. He also remained consistent towards his own party. When, after Fritsch had gone, a new Commander-in-Chief of the Army was to be appointed, it would have been easy enough to have chosen Reichenau, who had

National-Socialist leanings, but he appointed von Brauchitsch. He did not want any political generals, not even National Socialist ones. His point of view was that he was the Fuehrer and he the politician; the generals had to see to their own affairs, they knew nothing about politics. He did not even tolerate advice when it concerned politics. The generals did in fact repeatedly venture to express doubts as to his political plans, but were obliged here to limit themselves strictly to purely military points of view.

This sharp division of political and military spheres of competence is, for that matter, not characteristically German. It applies also, if I see rightly, to Anglo-Saxon democracies, and indeed to a particularly strong degree.

At any rate it was so under Hitler; he made political decisions, and it was only on their military execution that the generals had any influence. It was their task to make the military preparations necessary for all political eventualities. But it was Hitler who pressed the button to set the machine in motion. The "whether" and "when" were decided upon by the Fuehrer. It was not for them to weigh the opportuneness, the political possibilities, or the legal permissibleness.

Psychologically this attitude of the Fuehrer became still more pronounced owing to the hardly comprehensible mistrust he felt towards his generals. A remarkable phenomenon, anyone who disregards it can never come to understand the atmosphere which reigned in the Fuehrer's Headquarters. It was a mistrust of the —as he thought—reactionary attitude of the officers' corps. He never forgot that the Reichswehr had fired at him in 1923. This was, moreover, the natural mistrust of a military dilettante, who nevertheless wanted to be a strategist, toward the military expert, and also probably the mistrust of the political expert toward political dilettantes in officers' uniform. This mistrust of the political outlook of his military entourage was moreover by no means entirely unfounded. For the generals had wanted to put a brake on his rearmament plans, to hold him back from the occupation of the Rhineland, and had expressed objections to his march into Austria, and to his occupation of the Sudetenland! And yet all these actions had succeeded smoothly and without bloodshed. The generals felt like gamblers when carrying the plans out, but Hitler was sure of his game. Is it to be wondered at that their political judgment did not carry too much weight with him, and is it to be wondered at that on the other side, the apparent infallibility of his political judgment met with more and more recognition?

Thus Hitler tolerated no interference in his political plans and the outcome of it, as has been drastically represented to us here, was that, had a general raised objections to Hitler's political decisions, he would not actually have been shot, but his sanity would have been doubted.

To receive advice was not the concern of this man of power at all. Thus, at the beginning of military undertakings, the chances of the plan were hardly ever considered in general discussions. None of the important decisions since 1938 came as the result of advice, on the contrary, the decision often came as a total surprise to the military command. Thus it was, for instance, with the march into Austria, of which Jodl learned two days before, or in the case of the attack on Yugoslavia, which was suddenly decided upon by Hitler and carried out without any preparations within a few days. The alleged "discussions" at the Fuehrer's quarters, the course of which the witness Field Marshal Milch described so clearly, were nothing else but the "issuing of orders."

Within the Wehrmacht too, of course, the spheres of competence of the individual departments were sharply divided, and the method which Hitler used in order to make these divisions as insurmountable as possible is of interest. This was achieved by the method of secrecy. Enough has been said about this, particularly about the so-called "Blinkers order," which forbade anybody to get an insight into anybody else's work. It thus happened that each department was isolated and strictly limited to its sphere of tasks. Obviously what Hitler desired to achieve by this system was that he should be the only one to get information from all sides, and that he should retain the reins in his hands as the only fully informed person.

Indeed, even more, he strengthened this system still more by only too often playing individual personalities, groups, and departments off one against the other to prevent any conspiracy amongst them.

These methods were interesting, because they often inevitably came into conflict with one of the basic ideas of National-Socialism —the Fuehrer principle—but were carried through in spite of this, for instance, when the sphere of competence of two departments covered the same territory, such as perhaps the competence of a military commander and of Himmler in the same occupied territory. What was ordered by one did not concern the other, even though the carrying out of the order might encroach upon the arrangements for which the other was responsible. Thus the military commander was in no way the master in his territory. Things were the same in the civil administration too; there was the duplication of the Landrat (prefect) as a state functionary and the Kreisleiter (districtleader) as a party functionary of the Reich Governor and the Gauleiter. Everywhere there was a dualism of powers and therefore a dissipation of power. There was method in this; it prevented lower organs becoming too strong and secured the power of the supreme leadership. It may be said epigrammatically that the Fuehrer principle was realized only in the Fuehrer.

What then was the position of Jodl's sphere of competence within all this machinery?

He was the chief of the operational staff of the armed forces, which was a department of the OKW coming under Keitel. Jodl's main task was, as the name of the department implies, to assist the Supreme Commander in the operational leadership of the armed forces. He was the Fuehrer's adviser on all operational questions—in a certain sense the Chief of General Staff of the armed forces. The task of this Chief of General Staff in all countries in which this arrangement is known is not that of giving orders but of advising, assisting, and carrying out. Even if from this alone, it follows that Jodl's position has frequently been misunderstood during the course of this trial.

1. He was not Keitel's Chief of Staff, but the chief of the most important department of the OKW, though he had nothing to do with the other departments and sections of the OKW.

He was also not Keitel's deputy. Keitel was represented by the senior departmental chief. This was Admiral Canaris and, in his absence, Jodl. But, as Keitel was present almost without interruption, he only had to be represented very rarely.

2. It is also wrong when Jodl is designated by the Prosecution as the commander of one campaign or another. He had no power of command, let alone being in command of an army.

3. It was also wrong when it was repeatedly said that Warlimont was present at the meeting of 23 May 1939 as Jodl's "representative" or assistant. Warlimont was in the OKW, Jodl had left the OKW in October 1938 and had nothing more to do with Warlimont in May 1939. What results from all this with reference to Jodl's responsibility for the real or alleged wars of aggression?

In general, one can only be made responsible for what one does criminally whereas one should not do it, and for what one has criminally failed to do whereas one ought to have done it. What an officer or an official has to do or not do is a question of competence. So this is where the problem of competence assumes its importance for us. Let us look at it more closely.

Jodl is reproached with having planned and prepared certain wars which were breaches of international law. This reproach is justified only if it was within his competence to examine, before he carried out his task, the legality of the war which might be waged and to make his cooperation dependent on this decision.

This must be very definitely contested. Whether to wage a war is a political question and is the politician's concern. The question of how to wage war is the only question concerning the armed forces. The armed forces can suggest that the war is, in view of the opponent's strength, too risky or that the war can not be waged at a particular season, but the final decision rests with the politicians.

I could in fact imagine that the Chief of the Operational Staff of the armed forces would become at least morally guilty of complicity in a war of aggression, if he had incited the decisive quarters to bring about a war, or if, drawing attention to military superiority, he had advised the political leadership to exploit the moment in order to carry out extensive plans of conquest. In such cases one could call him an accomplice, because he—over and above his military task—intervened in politics and provoked the decision for war. But if he plans and carries out the plan of war in eventu, i.e., in case the political leadership decide on war he does nothing else but his evident duty.

One should consider the extraordinary consequences which would arise from a contrary conception: the competent authority declares war, and the Chief of General Staff, who regards this war as contrary to international law, does not cooperate. Or the Chief of General Staff is luckily of the same opinion as the head of the state, but one of the army commanders has objections and refuses to march, another one has doubts and has to think it over first. Can a war be waged at all in this case, be it a war of defense or a war of aggression?

Such a conception of law would, in the future, lead to results which could not be vindicated at all. The Security Council of the Allied Nations has decided to set up a world police with the task of protecting world peace against aggression. And also the creation of a world general staff has been considered which would have to plan and carry out this punitive war. Now let us imagine that the Security Council decides on a punitive war and the Chief of General Staff replies that in his opinion, there is no aggression. Would not the whole security apparatus in this case depend on the subjective opinion of a single non-political person, i.e., would it not in fact become illusory?

I only add one more thing in passing. If this opinion should prevail, what efficient man would still decide to become a regular officer, if, on reaching a high position, he had to risk being put on trial for crimes against the peace in case of defeat?

It is, for that matter, wrong, even if only for practical reasons, to impose on a general the duty of examining the legality of a war. The general will only seldom be in a position to judge whether the state to be attacked by him has broken its neutrality or whether it threatens to attack or not. And furthermore, the conception of a war of aggression and of war contrary to law is, as Prof. Jahrreiss has explained, still completely uncleared and contested among the practitioners and theoreticians of international law. And how, a general who lives far apart from all these considerations is to recognize that it is his duty to carry out a legal examination?

But even if he had recognized the war as illegal, just let us imagine the really tragic position in which this general would find himself. On one side is his evident duty toward his own state, which he particularly took an oath to fulfil as a soldier, on the other side this duty not to support any war of aggression. A duty which forces him to commit high treason, and desertion, and to break his oath. One way or the other he will become a martyr.

The truth is this. As long as there is no superstate authority which impartially establishes whether, in a concrete case, such a duty does exist for the individual and as long as there is no superstate authority which will protect people who fulfil this duty against punishment for high treason and desertion, an officer cannot be held criminally responsible for a breach of the peace.

Under all circumstances a contradiction must here be pointed out, which the Prosecution has fallen into, on one hand it reproaches the generals with not having been solely soldiers, but also politicians; on the other hand it demands of them that they should remonstrate against the political leadership and sabotage its resolutions—in short, that they should not solely be soldiers, but politicians.

The Prosecution does actually acknowledge this up to a certain point. They say that it is not intended to punish the generals for having waged war, for this is their task, but they are reproached with having caused the war.

And the second argument, which often recurs, is that, without the generals as helpers, Hitler could not have waged these wars, and that makes them co-responsible.

This argument contradicts itself. For the help which the generals gave Hitler consisted in the planning and carrying out of the military operations, i.e., in waging the war, for which they can, in the opinion of the Prosecution too, not be criminally accused. Let us look at this more closely. Jodl is said to have caused wars. It has been sufficiently proved that he played absolutely no part in the launching of the Polish campaign. And it was this very campaign which, with strategic necessity, brought about all the further happenings.

Actually one need not examine the origins of the individual wars at all to be able to say, according to what we know now, that in this assertion there lies an enormous over-estimation of Jodl's power in the Hitler state. The resolution to start the war was far removed from his influence. Advice from the generals was not heard on this very point. At most, purely military considerations for and against could be submitted. And the Norwegian campaign was the only one of all these campaigns which a military man advised Hitler to carry out for reasons of strategic necessity. But that was not Jodl. As regards the latter, the assertion that he caused wars would be founded on nothing. Let the protocol, the memorandum, or any other document be shown according to which Jodl at any time incited people to war, or even only recommended the resolution to start a war. His Gauleiter speech is produced against him. In it Jodl shows—looking back—how the events developed out of one another. For instance, how the Austrian Anschluss facilitated action against Czechoslovakia, and how the occupation of Czechoslovakia facilitated the action against Poland. But it is bad psychology to deduce from this that a general plan for all this existed from the first. If I buy a book, which draws my attention to another one, and I then buy the latter as well, does it follow that, at the time of the first purchase, I already had the intention of getting the second one as well? If Hitler had extensive plans right from the start, Jodl did not know of them, let alone consent to them. His purely defensive deployment plan of 1939 already proves that by itself alone.

Every time a campaign had been resolved upon, he did indeed do his bit to carry it out successfully. It is thus supporting activity which is the object of the second of the arguments mentioned earlier.

It is true that without his generals, Hitler could not have waged the wars. But only a layman can build up a responsibility on that. If the generals do not do their job, there is no war, but one must add; if the infantryman does not march, if this rifle does not fire, if he has nothing to clothe himself with, and nothing to eat, there is no war. Is therefore the soldier, the gunsmith, the shoemaker, and the farmer guilty of complicity in the war? The argument is based on a confusion between guilt and causation. All these persons, and many others too, effectively cooperated in the waging of the war. But can one therefore attribute any guilt to them? Is Henry Ford partly responsible for the thousands of accidents which his cars cause every year? If an affirmative answer is given to the question of causation, the question of guilt is still not answered. The Prosecution even refrains from putting this question.

The question of guilt will be discussed later. Here only the following is anticipated. A guilty participation in the planning and carrying out of a war of aggression presupposes 2 things—

1. That the culprit knew that this war was an illegal war of aggression.

2. That, by reason of this knowledge, it was his duty to refrain from cooperating in it.

The latter links up with what has already been mentioned. By virtue of his position, it was Jodl's duty to make plans. Whether they were used or remained unused, did not depend on him. It is characteristic that Jodl made a whole series of deployment plans which were never carried out. All general staff tasks are only drawn up for an eventuality—in case the political leadership should "press the button." Often they did it, often they did not. That was no longer a matter for the general staff officer.

The other presupposition for an accusation of guilt is that the culprit recognizes the war as a war of aggression. The question is, therefore, how these things appeared to him. How they were in reality interests the historians. The decisive question for the criminal lawyer is: What reports were submitted to Jodl about the conduct of the enemy? Could it be taken from these reports that the enemy was acting contrary to his neutrality, that he was preparing an attack on us, etc.?

The decisive point is not whether these reports were true but whether Jodl believed them to be true. I must stress this, because it has been said here at times "the court will decide whether this was a war of aggression." That, of course, is true, because if the court decides that it was not a war of aggression, any sentencing for a war of aggression will fall out from the start. But if the court agrees that the war was, in fact, launched illegally, this does not in itself affirm the guilt of any person.

Someone who takes someone else's watch in the belief that it is his own is no thief. The guilt is lacking, for had it really been his own watch, he would not have been liable to punishment. So if Jodl believed that facts existed which, had they been true, would have made the war a legally admissible one, a sentence for breach of the peace would not arise.

Now the Prosecution has repeatedly asked the generals the ironical question how it confronted with the ethical code of an officer to assist in a war which they had recognized to be illegal.

Let us assume that Jodl was sure that the war was illegal and that he had, for reasons of conscience, refused to collaborate. What difference would there have been then between him and a soldier who throws away his rifle in battle and retreats? Both of them would be liable to the death penalty for disobeying orders in war.

I know that the United States is generous enough to respect a soldier who, for religious reasons, refuses to take up arms and not to treat them as we do. But that doubtless does not apply to a man who, owing to objections based on international law, does not cooperate in the war decided on by the political leadership. One would object that it is not his affair, not an affair of conscience, to examine the admissibility of the war, but that this is the duty of the responsible state authorities. According to continental law, one would not even begin to consider such an excuse for refusing obedience.

Furthermore I regard that ironical question to the generals merely as an attempt to lower them morally not as an accusation touching the subject of these legal proceedings. The International Military Tribunal is not a court of honor which decides about the actions of the accused as they concern honor, but a criminal tribunal which has to judge certain actions which have been declared criminal by the Charter. It appears to me that the prosecution forgot this fact on several occasions.

Before I pass on to the last point—the eleventh of the Anglo-American trial brief, regarding crimes against the laws of war and humanity, I must make a few preliminary remarks.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

Again we must turn first to the question wherein lay Jodl's responsibility as Chief of the Operational Staff of the armed forces?

As we know, Jodl was primarily the adviser of the Supreme Commander-in-Chief in the operational leadership of the armed forces. This staff, however, had still other departments in addition to the operational departments of the three branches of the armed forces. When the operational tasks increased tremendously during the winter of 1941–1942, a division of work was arranged between the chief of the OKW and Jodl, according to which Jodl was only responsible for the military operations and the drawing up of the Armed Forces Report, while the chief of the OKW worked on all other matters in connection with the quartermaster department and the organizational department of the operational staff of the armed forces. It follows from all this that Jodl had nothing to do with prisoners-of-war, for whom a special department in the OKW was responsible, nor with the administration of the occupied territories, and therefore nothing with the seizure of hostages and with deportations (I shall discuss UK–56 later).

Nor did he have anything to do with police tasks in the zone of operations or in the rear military zone.

The operational staff of the armed forces had no authority to issue orders; nevertheless, there are many orders to which Jodl signed either "by order" or with his own "J."

We must now thoroughly discuss these orders and the responsibility for them.

1. There are orders which commence with the words "The Fuehrer has ordered" and are signed by Jodl, or signed by Keitel and initialed by Jodl. These are orders which were given by the Fuehrer orally, with the order to Jodl to draft them or put them into writing. With regard to the responsibility, the same applies here fundamentally as for the orders signed by Hitler. For, in order to determine the responsibility, one must ask the questions "What was the task of the person to whom the order was communicated? What was his right and his duty to do?"

When the contents of the order were fixed in all their essential points, Jodl's task was only a formal one; he had to word what was already established, to give it the usual shape of a military order, without being allowed to alter anything in its contents. It must not be overlooked that the criminality of an order can only lie in its contents and that it was precisely the contents which a subordinate had no influence on here. There the reason for the impunity of the subordinate does not lie in the order of his superior officer to act thus or thus, but in the lack of competence to alter anything in the given facts. If the Prosecution then sees in the formulating of the order criminal assistance, it is impossible to agree with this. In the first place, because it is an order of the Fuehrer's which creates law and in the case of which criminal assistance is impossible.

But even this is not accepted, and a Fuehrer's order is, on the contrary, considered as contrary to law and as punishable, one can still not get over the fact that it was not Jodl's business to examine the legality, but only to draw up the order technically correct, i.e., in accordance with the will of the author of this order. If he did this and only this, he has no responsibility. Here the superior essentially gave the order himself, and the subordinate just put it into words. People actually want to make a difference between a clerk being given the job of writing down the order and a senior general.

The latter too will not have the legal, but perhaps he will have the moral, duty of expressing his scruples to his superior. Jodl actually always did this; this was the least of his various methods to prevent an illegality, to which I shall refer later.

2. Another very frequent case is where Jodl signed his order "I. A.," i.e., "Im Auftrag" (by order) or also initialed with his "J" orders signed by Keitel. Where does the responsibility lie here? We shall have to differentiate here between military and legal responsibility. From the military point of view, the superior, by whose order the order is signed, is responsible for it. Criminal law, however, lays the emphasis on the guilt, i.e., it wants to find the real culprit, not the person responsible from the military point of view. As, however, the owner of the initial or the person signing "by order" is mostly the author of the document, it may happen that the latter is responsible for purposes of criminal law, although he is not responsible in the military sense. For this reason it is necessary here to ascertain the actual share of both signatories in each case, and to determine the culpability accordingly.

3. Where Jodl did not affix his initial on the right below the last word of the document, but on the top right hand corner of the first page, it means merely that the document was submitted to him for his information. It does not say whether he actually read it or approved of it. Initials affixed in this manner do not, therefore, by themselves bring the initialer into any connection with the order for criminal purposes.

4. Jodl is also being charged now with certain notes, partly so-called "memoranda," partly handwritten remarks which he wrote on drafts or other documents. What is the position with regard to the legal significance of such notes?

The following statement has already been made in the "Fall-Gruen" in connection with the tentative proposal to manufacture an incident: A memorandum contains the deliberations, statements of fact, and opinions of the author or of other authorities, etc. It is not an order but the data on the basis of which the superior can decide whether he will issue an order and what order. As long as such a memorandum remains a memorandum, it is a purely internal affair without any significance in international law and can never be a violation of the laws and customs of war, as was explicitly laid down as the presupposition for punishment on Article 6b of the Charter.

The same applies to the marginal comment which so often occurs in the files of the OKW: "Yes," "No" or "That is impossible," etc.

Admittedly, such memoranda or marginal comment may obtain legal significance. If a memorandum contains a proposal which is contrary to international law, and if it influences the superior in such a way that he issues an order with the same contents, this might possibly be regarded as participation in a violation of international law. If, however, no order is issued, or if an order is issued which is contrary to the proposal, then this proposal has remained without effect, a purely internal matter, and unpunishable under all circumstances.

Furthermore, a memorandum or marginal comment may be a guide to the writer's sentiments. It may be gathered from it that he is inclined favorably toward international law or that he takes no account whatsoever of considerations of international law. That may often be an important help in judging his character.

But we do not punish the sentiments. Murderous intentions throw a bad light on the subject, but are not punishable. Caution must of course be exercised in the evaluation of such remarks. They are often thrown in thoughtlessly, without much deliberation, only intended for the reader in question, etc.

If we take all this into account, several of the accusations which the prosecutors have raised against Jodl are eliminated in advance.

1. His behavior on the matter of the low-flying airmen (*731–PS, 735–PS*). It had been proposed to leave low-flying airmen who attacked the civil population in a truly criminal manner, as it happened again and again, to the lynch law of the people. Jodl was opposed to this proposal, as it was bound to lead to the mass murder of all airmen who parachuted down. Jodl raised objections and more objections in the form of marginal comments. He succeeded in sabotaging the order thereby. The armed forces never issued such an order. This should be placed to Jodl's credit, but it is apparently held against him that he did not use words of moral indignation in declining the proposal. Under the conditions existing at the time, such a cause would probably have had even the opposite effect. In any case, there is no crime here.

2. *Commissar Order (884–PS)*. On this horrifying draft order which had been drawn up already prior to the outbreak of the Russian war Jodl made the comment that it would provide reprisals against our soldiers, the order should preferably be drawn up in the form of a retaliatory measure, i.e., one should wait and see what action the commissars really took, and then take counter measures perhaps. Again he is not given credit for the fact that he opposed it, but he is accused of how he opposed it. From a legal

point of view that is meaningless. He did not even receive news regarding the success of his protests.

3. *Geneva Convention (D–606).* In this case Jodl did not only submit a memorandum but also a statement in great detail to Hitler, as he wished under all circumstances to cross the latter's plan of renouncing the convention. There he mentions all the reasons against the renunciation, and reassures Hitler afterward by saying that it is possible to circumvent certain clauses even without a renunciation of the convention. This again is not an action contrary to international law, but shows at the most sentiments opposed to international law. More correctly, it appears to do so. In truth this was nothing but proven tactics for dissuading Hitler from his infamous plan. The renunciation did not take place. If one takes offense at the unethical argumentation, one overlooks the fact that Jodl, after five years experience, knew better than we do with what arguments it was possible to persuade his chief.

4. *Order regarding Leningrad (C–123).* By letter of 7 October 1941, Jodl notified the Commander-in-Chief of the Army—and it's nothing but a notification—that Hitler had repeated an already previously issued order to the effect that an offer of capitulation was not to be accepted from either Leningrad or Moscow. Such an offer was, however, never made, the order could not therefore have been carried out at all. The whole matter remained on paper, and if only for that reason does not constitute a violation of international law. This also can at the most be regarded as a guide to the author's sentiments, but has no place on an indictment for the suspicion of a punishable action. The following should, however, be added in explanation of the matter. In this letter Jodl explained the indisputable situation of constraint which had caused Hitler to issue this order.

a. An offer of capitulation would only be simulated. Leningrad, in fact, was mined and would be defended to the last man as the Russian wireless had already announced. The bad experiences as a result of the delayed action mines prepared according to a plan in Kiev, Odessa, and Charkov had taught the German operational staff what things they must beware of.

b. In addition there was the great danger of an epidemic which would exist also in case of a genuine capitulation. Even if for that reason alone, German troops must not be allowed to enter the town. Acceptance of a capitulation was thus not practicable at all.

c. Added to that was the sheer impossibility of the German troops feeding a half-starved urban population of millions as well. The railway tracks had not as yet been altered to the width of the

German tracks, even the supplies for our own troops caused much worry. And finally there was the military danger for the German operations, of which Field Marshal Leeb had complained to the defendant Keitel.

All this compelled steps to be taken to prevent the population of the towns from fleeing westward and southward through the German lines, but to make escape to the East possible for them, indeed, even to encourage it. Hence the directive to leave gaps in the front in the East.

The fact that Hitler let it be understood how he intended to utilize the militarily technical situation of constraint within the framework of his Eastern plans lies outside the military considerations. It has nothing to do with the order itself. The only question is whether it was inevitable from a military point of view, and this it was in fact, for the above-mentioned reasons. Whether renewed notification of the order was given by Jodl or not could not alter the situation in any way.

I shall discuss now individual war crimes of which Jodl has been accused.

a. The Commando Order. Two orders of the 18 October 1942 which were drawn up word for word by Hitler and signed by him have played a special part in this trial—the so-called Commando Order to the troops (*498–PS*) and the explanatory order connected therewith to the commanders (*503–PS*).

According to their substance these orders lie outside Jodl's sphere. If Jodl had anything to do with the matter at all, then it was for a special reason. These orders are executive directives to an order which had been issued by Hitler 15 days previously which had also been drawn up by him personally and attached to the Armed Forces Report of the 7 October 1942. Jodl composed this Armed Forces Report as usual, and therefore also the supplement regarding the previous history of the order which Hitler afterward had added at the end of the Armed Forces Report. Hitler requested him therefore to work out drafts for the executive order. Jodl did not do so, nor did he submit a report which his staff had drawn up on their own initiative to Hitler. On the contrary, he had Hitler—with whom his relations were very strained at that time—informed that he was incapable of conforming to the request. Hitler then drew the two orders up himself.

Jodl is now accused of two things, he distributed the orders drawn up by Hitler through official channels, and he furnished the second, the explanatory order to the Commanders, with a special directive for secrecy.

The order arose from Hitler's excitement about two kinds of intensified warfare which made their appearance about the same time in the autumn of 1942. One was the fatal efficacy of excellently equipped sabotage detachments which landed by sea or were dropped from the air. The other one was a special running wild in the fighting methods of enemies who acted singly or in small groups.

Jodl has described here how this running wild appeared from the messages and photographs of the troops. Experience showed that these methods, which violated all military ethics, were met with especially among the sabotage detachments. Hitler wished to counteract these unsoldierly methods, and to stop the sabotage activity which was so dangerous for the German prosecution of the war, but knew, of course, that sabotage cannot be objected to on grounds of international law if it is carried out by ordinary soldiers. Hitler's first order, the one contained in the Armed Forces Report of the 7 October 1942, is therefore quite simply explained, no mercy will be shown to enemy soldiers who appear in sabotage detachments and behave "like bandits," i.e., who place themselves outside the military code by their method of fighting.

The executive directives should have defined the standard of unsoldierly conduct; Hitler's executive directive did not contain this definition, in the decisive points it is not definite, and this made it possible to apply the order in the sense of its undoubtedly justified fundamental idea, and not to apply it where there were even doubts as to whether one had been dealing with "bandits."

After all the reports which had been received about the enemy's behavior, Jodl considered the basic tendency of Hitler's directive in the Armed Forces Report of 7 October 1942 understandable, and thought that the directives given by Hitler in the Commando Order of 18 October 1942, which were in some points not clear, were in part admissible from the point of view of international law and in part perhaps questionable from the same point of view. He says that he still knows no more exactly now than he did then, whether, and to what extent these directives were contrary to international law. He says that one thing only was certain, namely, that the indefinite wording of the order made it possible for the commanders to apply the order only against people who had simply placed themselves outside the bounds of soldierly behavior.

Jodl hoped that this method would be applied and, as far as he could, he promoted it, as is proved by evidence taken. He used all his powers to help insure that the practical application of the Commando Order was restricted to what was undoubtedly admissible. He took steps to insure, further, that the order was not applied in large areas, i.e., in the greater part of Italy, as soon as it was at all possible to wrest a local limitation from Hitler *(551–PS)*.

The directive for secrecy is interpreted as a sign of Jodl's consciousness of guilt. But this secrecy had cogent reasons of a different nature. The enemy had to be prevented, as far as possible, from learning what serious damage their sabotage detachments which were operating in a bandit-like manner were causing. Hence the special directive for secrecy only in the order 503–PS, which gives information about the damage, while the main order was known to the whole world through the Armed Forces Report. There was actually also a second reason for Jodl's imposition of special secrecy on the explanatory order. He did not wish to see the final decree, according to which captured Commando personnel were to be shot after interrogation, circulated. It revolted him as a human being to exclude unsoldierly fighters from the sphere of the Geneva Convention, whether such a course was admissible or otherwise according to international law. He hoped, and was justified in hoping, that the commanders would find ways of preventing inhumanities in individual cases by means of a healthy interpretation. And unauthorized persons were not to have knowledge of the decree.

The fundamental idea, which it was not indeed necessary to exceed in practice, conformed to international law which is only intended to protect men who are fighting as soldiers. This is, after all, the tendency of all the articles of war, which presupposes a chivalrous battle. Something had indeed to be done to turn the use of such wild methods into a hazardous operation for the enemy. Nothing could be said against sabotage detachments who fought in a soldierly way. The enemy had only to desist from those methods which were in radical contradiction to international law.

The following must also be stressed. The transmission of this order does not prove responsibility for its contents. This is not like other cases where Jodl advised or drew up the order, on the contrary, he refused to draw it up. He merely distributed it, as instructed, through the ordinary official channels. He is guiltless, however, not because—or better, not only because—he was ordered to pass it on, but because he had no right to interfere with the order which was to be passed on. It was outside his jurisdiction, outside his rights, to examine it. His activity was purely technical, independent of the contents of the document. In theory he was not even obliged to read it. Let us assume that, after drawing up the order, Hitler told some lieutenant to telephone it to the

Commander-in-Chief. Would it then have been the lieutenant's right and duty also to examine the contents of the document with regard to its legal admissibility and to announce afterward "I will not do this," or "I shall have to consult the Hague convention for Land Warfare first to see if I am allowed to do it"? The most grotesque consequences would ensue! And in this case the colonel general is also nothing but a messenger who passes on what has been handed to him. Jodl's answer to my question as to what would have happened if he had refused to pass it on is characteristic of the military interpretation of the situation, "In that case I would have been removed immediately, and rightly so!"

b. Partisan warfare. As far as partisan warfare is concerned, reproaches could be levelled against Jodl only in two cases—

1. If he had permitted the warfare to take place in a disorderly and "chaotic" manner, as one witness has asserted, or

2. If he had issued battle directions, but if these had been contrary to international law.

But neither of the two is the case; Jodl was not personally responsible for this matter, but he had to take some interest in the partisan activity when it reached an extent which was beginning to interfere with the military operations. He issued a directive in 1942 which was replaced by a second one in 1944. It is therefore out of the question that no rules existed for the combating of partisans. Nor can Jodl be reproached on the second point. Although Hitler wished to have a type of warfare waged against these dangerous opponents which had no consideration for ethics and international law, Jodl—without his knowledge—issued a pamphlet about the combating of partisans which cannot be attacked legally. He went as far as to have partisans in civilian clothing treated as prisoners of war, and to permit the burning down of villages to be carried out only on the orders of a divisional commander; this was intended to, and could prevent violations of Article 50 of the Hague Convention for Land Warfare (*RF 665, Doc. Book 11, Jo 44*).

Jodl cannot be reproached, however, if the combating of partisans nevertheless degenerated badly. It is not a matter for the Chief of the Operational Staff of the armed forces to supervise the observance of his directions in four theaters of war.

c. Burning down of houses in Norway (754–PS). The prosecution have accused Jodl during cross-examination of having ordered the destruction of Norwegian villages. This accusation refers to the teleprint of 28 October 1944 to the High Command of the 20th Mountain Army. The Prosecution has a false idea of the role which fell to Jodl's lot here.

The military position was then as follows. The Germans were retreating to the not yet completed Lyngen line. And there was a danger that the Red Army would continue to follow up during the winter and would thus destroy the much weaker German units, if, while advancing along the Reich Road 50, the only one that could be used at this time of year, they found the homes and the population with their local knowledge available. Without these billets and the support from the population the Russian advance was impossible. The evacuation of the population and the destruction of the houses would exorcise the danger and, over and above this, it would make partisan warfare against the German troops impossible. But the evacuation of the population was also necessary in the interests of the population itself.

In this position, Hitler issued, not on the advice of the soldiers but on that of the Reich Commissar for the occupied Norwegian territories, the decree which Jodl reported, by order, to the High Command of the 20th Mountain Army through the proper channels with all Hitler's military and ethical considerations. One can really hear Hitler's radical way of speaking.

Jodl, who knew, as a result of a telephone conversation with the staff of General Rendulic, that the mountain troops did not need such a far-reaching order militarily and therefore did not want it, was against this order and—when he could not prevent it—sought for a solution which in practice led to the correct result. He wanted the order to be carried out by the troops only as far as was absolutely essential militarily and in accordance with what was permissible under the Hague Convention for Land Warfare (*Art. 23 g*). He knew that his brother, who was in command in the North, thought exactly like him, he knew the soldierly spirit of the mountain troops in general and he knew in this particular case in advance that this order went too far for the troops. So that it should be understood correctly by everyone right from the start, in the introduction to the teleprint he not only explained clearly that it was a "Fuehrer order"—the second paragraph expressly uses these words—but he let the soldiers know that the Fuehrer had issued this order on the suggestion of the Reich Commissar, and not on the suggestion of the military. Then they knew. And they acted accordingly. No militarily unjustified demolitions occurred. Thus among others, the three towns of Kirkenes, Hammerfest, and Alta were not destroyed. According to the literal application of the order, they had to be destroyed.

d. Deportation of the Jews from Denmark (UK–56). The Prosecution wants to make Jodl responsible for the deportation of the Jews from Denmark. The prosecution bases this accusation on a teleprint which Jodl sent "By order" (I.A.) to the commander of the German troops in Denmark. It is particularly difficult to understand this accusation by the Prosecution. For the different documents submitted by the Prosecution unequivocally prove that the deportation of the Jews from Denmark was decided upon by Hitler on a suggestion from Dr. Best, therefore, on a suggestion from the civil authorities and against the objections of the commander of the German troops and that this task was assigned to the Reichsfuehrer SS. The OKW was concerned with the whole affair only because at that time the military state of emergency existed in Denmark, so that the commander of the German troops, as the highest executive authority in the country, had to be informed by his superior authority of the action ordered by Hitler and assigned to Himmler in order to prevent friction between the German authorities in Denmark.

On 20 September 1943 Keitel and Jodl had received the first intimation of the discussions between Hitler, the Foreign Office, and Himmler, in a teleprint from the German commander. Jodl had only one wish—to keep the armed forces out of this matter. His temperamental remark on General von Hanneken's teleprint of 3 October 1943 (*D–647*) "Also a matter of complete indifference to us" (namely, whether the Reichsfuehrer SS publishes the figure of the Jews arrested or not) shows that only too well this has nothing at all to do with ethical considerations, either positively or negatively.

The whole thing had nothing to do with the armed forces. But difficulties could arise as a result of Himmler's action, as the armed forces were after all responsible for quiet and order in Denmark. The armed forces could not alter the decision taken by Hitler in this police matter, and could not have altered it even if they had been competent for this question.

Jodl simply informed the commander, by the teleprint UK–56, of the decision Hitler had taken in the field of the police. And the Reichsfuehrer SS, the Foreign Office, and the commander in chief of the reserve army were simultaneously informed by Jodl that he had let the commander in Denmark know. Now there was a clear line, and friction between German offices was excluded. And the OKW had only to see to this.

One cannot say that the information which Jodl gave made the execution of the order which Hitler had decided on apart from the Wehrmacht easier. It is clear to anyone who knows even a little about Hitler's position of power that friction between German offices would in no way have prevented the thing being carried out, but would at most only have delayed it, and would certainly not have made it pleasanter for the persons affected.

Your honors, it is an old saying of criminal law, a saying which I always find cited in foreign decisions too, that, "actus non facit reum nisi mens sit rea." Two things go to make a crime, the "actus," the objective side of the crime, the deed; and the "mens rea," the subjective side, the guilt.

The Prosecution has fallen into a remarkable contradiction there. In some cases it stresses the "mens rea" and fails to see that the criminal "actus" is lacking. I have shown this in the case of the above-mentioned marginal comments, which do not represent any illegal actions, but at most could allow one to infer an illegal frame of mind. In other cases the prosecution looks only at the "actus," but does not ask whether a "mens rea" is also present. This second mistake is more dangerous, as here the outside of the crime is visible to everyone and it is often only a delicate psychological examination that comes to the conclusion that there is no "mens rea" which corresponds to the "actus." We will come to speak of this further on.

As regard the action, what is meant is behavior declared criminal by the Charter. This behavior can consist of positive action or of omission. If a father sees his child drowning while bathing and does nothing to save it although he could have, we declare him guilty either of murder or of killing by negligence, according to the degree of his guilt. This commission of a crime by omission is important in this trial too. For the Prosecution repeatedly stresses that Jodl was present at this or that meeting, at this or that speech. On one single page of the Anglo-American trial brief the sentence "Jodl was present at * * *" occurs six times. What does this mean legally? Being present at and listening to things can be of great importance for the evaluation of a later deed, for the doer cannot excuse himself by saying "I didn't know" if he participated in the discussion of a plan. But mere presence does not in itself make one co-guilty. According to British law, even presence actually when a crime is committed makes one co-guilty only if encouragement is added. The same applies in German law. But where such does not come into the question, to lay stress on a person's presence when a criminal intention was discussed can only be a reproach that he knew about and tolerated it.

We often hear this reproach of having tolerated crimes now not only in this court. The whole German people are reproached with having tolerated a criminal regime and the annihilation of millions of Jews. Undoubtedly a crime can also be committed by tolerating things. But to make it a serious criminal indictment, e.g., one for intentional killing two prerequisites must be fulfilled. (1) the subjective side, he must have known that the victim would meet his death if he did not intervene, (2) he must have been in duty bound, and able, to prevent this death.

As far as Jodl is concerned the following applies. What an officer or official is legally bound to do or prevent depends on the regulations governing competence, and we know how strictly Hitler insisted on their being adhered to, how sharply he managed to divide up the political and military leadership and the military and the SS in their spheres of tasks. This was indeed the reason why Jodl took every opportunity to oppose the plans for extending the SS, for one thing was clear, once something had become the sphere of the SS, the armed forces had lost the right to have any say in it. It does not therefore mean much, for instance, that Jodl was present at a discussion between Hitler and Dr. Best, at which one of the things discussed was terrorism in Denmark and the way to fight it (*RF 90*). The mention of so-called "counter-murders," if such were really discussed, was not heard by Jodl (he was not present at parts of the session). His presence at this session does not mean much if only because the whole matter concerned occupied territory and did not concern the Chief of the Operational Staff of the armed forces, who was brought into this meeting because of other things which were discussed at it. So even if Jodl had heard more drastic things at that time than he actually did, any interference would have been out of the question and would have been rejected at once.

The reproach of having tolerated things also assumes that the possibility existed of preventing the crime. In the case of Jodl, only orders by the Fuehrer come into the question primarily; these orders he should—as people say—have prevented. But enough has already been said here about how things stood with regard to influence on Hitler's decisions. As long as his decision had not yet been made, arguments could, under favorable circumstances, still impress him; but once his decision was made, it was irreversible. Any contrary opinion is simply based on ignorance of the facts. In course of time Jodl did actually develop other methods for influencing decisions of the Fuehrer, or at least for influencing their practical effects. He used delaying tactics; either he waited so as to let the matter be forgotten if possible, or else he made difficulties and raised objections, the type of counter arguments having actually to be adapted to Hitler's way of thinking (Order regarding Commissars); or he sent for opinions from various departments in order to gain time (low-flying airmen); if the order had to be published, he often inserted into it on whose application the order had been issued, in order to show the commanders in chief that he did not identify himself with this matter (Norwegian villages); or he tried to influence the practical application by not objecting to behavior contrary to the order (Commando Order, etc.). But if one thinks that he could simply have refused to draft an unethical order, one has only to look at the Commando Order, where this method had exactly the opposite effect to what was intended.

I now come to the second part of the Latin saying I quoted—the deed in itself is no crime, "nisi sit mens rea."

This is the last point in my statement and is at the same time the most difficult and the most important in a modern criminal trial.

"No guilt, no punishment," this principle has been accepted in all civilized states since the Renaissance, even though different views as to the nature of guilt may exist in some places.

Allow me first to make a short comparison between the Anglo-American legal view and that of the Continent, e.g., of Germany. It is important when judging some cases.

I have already had to touch on an important point of the question of guilt when discussing the aggressive wars. If one wishes to make Jodl, the general staff officer, responsible for waging these wars at all, it is at any rate of decisive importance how he viewed the whole state of affairs. If he believed, on the basis of the reports he received, that facts existed which—if they were true—justified the waging of war, Jodl cannot be reproached with having knowingly waged a wrongful war. This applies even if his assumption rested on mistakes. Such mistakes exclude design. In a decision Regina *v.* Tolson it is stated "at common law a reasonable belief in the existence of circumstances which, if true, would make the act for which a prisoner is indicted an innocent act has always been held to be a good defense" (Kenny, Selection of cases illustrative of English criminal law, p. 18). In another decision Regina *v.* Prince it is stated "It seems to me to follow that the maxim as to 'mens rea' applies whenever the facts which are present to the prisoner's mind, and which he has reasonable ground to believe, and does believe to be the facts, would, if true make his acts no criminal offense at all" (Kenny, p. 22). In a third case, Commonwealth *v.* Pressby, a good example is given, a sentry shoots at his commanding officer who is approaching him, in the belief that he is an enemy (Kenny, p. 14). This last example is closely related to the wars of aggression which are to be judged here.

As a rule, ignorance of criminal law is no excuse under British law. However, one finds the noteworthy principle "if, however, there is a doubt as to the question of law, a person cannot be convicted and subjected to imprisonment if he has merely acted on a mistaken view as to the law." Naturally a mistake about preliminary questions in civil law can also exclude criminal intention "if a person takes what he believes to be his own, it is impossible to say that he is guilty of felony" (Principle and practice of the Criminal Law, by Seymour F. Harris, London 1943, p. 26). This rule could also be significant in our field too for mistakes regarding the regulations of international law.

Yet in this doctrine of mistakes I see a certain difference from German law. In German law any mistake, even if resulting from negligence, excludes intention. In British law this seems to apply only to "reasonable" mistakes "unaccompanied by negligence." If that sentry had shot too soon and without sufficient investigation, he would, under German law indisputably only have to be sentenced for killing by negligence. In England and America, if I understand it rightly, this careless mistake would not be taken into consideration at all, and this soldier would have to expect a sentence for intentional killing. But this difference in the conceptions of law should not play any part in our case. For one can hardly reproach Jodl with having come to his conception of the situation on the basis of a hurried and careless examination of his reports.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

Lastly, in a third point which is of importance here, the views again agree. Every serious crime must be deliberate though, for deliberateness, one need not have the consciousness of doing something criminal, but one must be aware that it is not right to act in this manner. To constitute a criminal act there must, as a general rule, be a criminal intent. The general doctrine is stated in Hales Pleas of the Crown, that "where there is no will to committ an offense, there can be no transgression" (Commonwealth *v.* Pressby, Kenny, p. 14).

In German law, it has been argued for a long time whether the perpetrator must know that he is acting in direct contravention of the law, or whether it is sufficient for him to know that he is in general committing something contrary to his duty. And the prevailing opinion which has also been taken over by the plan of our German Criminal Code, states the perpetrator must be conscious "of acting against a law, or of acting wrongly in some other way, in a natural sense." I was greatly interested to find the same idea, expressed in almost the same words, in the decision of Green *v.* Tolson (Kenny p. 15–16) "it must at least be the intention to do something wrong. That intention may belong to one or other of two classes. It may be to do a thing wrong in itself and apart from positive law, or it may be to do a thing merely prohibited by statute or by common law, or both elements of intention may coexist with respect to some deed." Thus according to British law, knowledge of not being allowed to act thus is one of the constituents of intent "There is a presumption that 'mens rea'; an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offense." Sherras *v.* de Rutze, Kenny, p. 34). This decision quotes some exceptions to this principle, which do not interest us here, however, they concern bigamy and seduction, where positive definitions of the statute intervene, as well as certain offenses against public order, etc.

Our question now is, was Jodl aware of wrongdoing during the preparation and passing on of the various plans and orders of which he is accused to-day? According to my innermost conviction, No.

The only evidence of it, which the Prosecution has produced is the question, why, if he had a clear conscience, was he in some cases so intent on observing strict secrecy? There is an answer to this. In military questions there are the most manifold reasons for not allowing certain things to become known. This was so before the war and all the more so during the war, and even now, after the war, deep secrecy shrouds the atom bomb for example. This kind of observance of secrecy need not be connected with a guilty conscience. And if Jodl says he had arranged that one of the two Commando Orders should—irrespective of other reasons—be kept secret because of its repulsive final regulation, he did so, presumably, for the sake of the honor of the German Wehrmacht, and truly not because he thought that he himself was doing something wrong by passing on the order, which he had after all not drafted himself and for which, as he was convinced, he was not responsible.

This last fact must be stressed; it is of general importance. In all Jodl's military preparatory work, whether he was making plans for wars or drafts of decrees or memoranda the point is not only whether he knew or suspected that this war or that decree were contrary to law, but it is decisive whether he knew that by his cooperation, by his actions, he was doing something wrong. That Jodl did not have bad conscience clearly follows, it seems to me, from the fact that before his capture he had three weeks time in which to burn most of these documents, but did not do so, because he was quite convinced he had nothing to conceal.

When drawing up this order, he was not conscious of wrongdoing. He could not be if only for two reasons, partly because he felt himself bound by the Fuehrer's orders, partly because—regardless of any concrete order—he was convinced that in his position as Chief of the Operational Staff of the armed forces he was in duty bound to act in this way.

Let us look into this more closely. About the order and its legal meaning I will not speak any further. One point, however, appears to me to be in need of elucidation. Mr. Jackson quoted paragraph 47 of the German Military Penal Code to prove that, according to German law, an order by a superior officer does not excuse the subordinate.

Incidentally it is remarkable, that, in the case of the conspiracy, British-American law is used, whereas,—in the case of this order, German law is drawn on—in each case according to whichever is the less favorable to the defendant. I do not know, however, whether Mr. Jackson would have referred to paragraph 47 of the Military Penal Code, had he known how it was interpreted by the Supreme Military Courts and what was therefore the real legal position in Germany.

It is first of all necessary to establish that at the beginning of paragraph 47 there stands the principle, "Should, by the execution of an order on official business a criminal law be infringed, the superior officer issuing the order is alone responsible." And now comes the exception which practice has cut down to the absolute minimum for the sake of maintaining military discipline. It is based on the point of view that a subordinate is subject to punishment as a participant only if the order was not binding on him (because, for instance, owing to its nature it did not come within the framework of Wehrmacht tasks) and if the subordinate was aware that the action ordered had a crime or an offense as its aim; the offense must thus be directly intended by the person issuing the order and the subordinate must be certain of this (Reich Military Law Code 19, p. 195). That he could and should have realized this is not sufficient (Reich Military Court 13, p. 184). And, even if the subordinate is responsible, in case of slight guilt, punishment may be waived (final sentence of paragraph 47).

The whole definition is very much contested, but one can see how the courts have limited its validity in order to cover the obedient soldier as much as possible. Actually, a punishment of cases in this kind occurred very rarely. Jodl does not remember a single case in his 30 years of service.

I must insert something here, since a few days ago Mr. Jackson presented a document subsequently, which concerns this problem (*3881–PS*). These are statements which Dr. Freisler made as President of the People's Court during the trial of those who took part in the attempt of 20 July 1944. Freisler was always considered in Germany as a caricature of a judge, his unworthy shouts in that murder trial were produced here before us by the prosecutors a few months ago in a sound film. This legal expert—so far as the sense of his remarks, torn from the general context, is recognizable—meant, when an officer ordered a subordinate to give assistance in murdering Hitler, this order did not justify the one who obeyed. In order to establish this, Freisler's "authority" was not required in any case. If ever a military order was issued which went outside the competence of the Wehrmacht and was therefore not binding, and did not therefore serve as an excuse, it was the order to murder the head of this very Wehrmacht. But how an order by some officer or other to murder the head of the state can be compared with the order of the head of the state to commit an act contrary to international law is incomprehensible.

I am not, however, dwelling further on this idea. No understanding of Jodl's position can be achieved and no correct judgment of his actions formed, if we do not look at the two men who faced each other here.

The Prosecution have made it easy for themselves. Were Hitler still alive, he, as the head of the major war criminals, would sit in the first place on the defendant's bench and would be considered as the base and source of all terrible events. Now that he is dead, his person is minimized when judging the other defendants and their conduct treated almost as if he had never existed at all. This man of force, this infernal power, as Jodl called him, cannot be passed over as a negligible quantity when the question is to do justice to the commissions and omissions of his immediate entourage. During these months I have again and again had to think of the connection between genius, madness, and crime which was once shown by the perspicacious Cesare Lombroso. In history it is success that has the last word on the worth and worthlessness of men. That is why the judgment of history on Hitler will perhaps be a crushing one. But one must not forget his beginnings; when Germany's position at about the end of 1932 is compared with that at the end of 1938, one is not surprised at the incomparable prestige which he had at the very time when Jodl came into close contact with him.

Jodl now stood opposite this man. Jodl, an honest soldier, extraordinarily gifted, but never striving for anything else but to be a conscientious soldier, with a prosaically realistic mind, ill-disposed toward all diplomacy, all political machinations, grown up in accordance with the ideals of the German officer corps—bravery, faithfulness, obedience—training according to the 100-

year old tradition of the German General Staff, which knew only fulfilment of duty, selfless work, and more work.

That this man, who was working at Adolf Hitler's side, was bound to come under his influence is self-evident. One must consider the time at which this took place. A relation of confidence could not grow out of it, of course, but Jodl was also not the man to submit without opposition. There were enough clashes and explosions. Jodl was regarded as the man who dared to oppose the Fuehrer more than anybody else. He could, as Kesselring reported, oppose him with a sharpness which at times reached the limits of what is militarily permissible.

For this very reason I do not believe that it is order and obedience which can make us appreciate fully Jodl's behavior during these years.

It was rather the much more comprehensive thought of the fulfilment of duty, complete devotion to what had been allotted to him as his task at a critical time. One should realize the situation in which Jodl found himself, his country's battle for existence, the demands of the war which was continually becoming more horrible, and at the same time the view of his supreme Commander-in-Chief which deviated from all tradition—about what was permissible and not permissible in a war. It becomes quite clear that Jodl was bound to come into conflicts, into conflicts with Hitler and into conflicts with himself.

Permit me to make a comparison. You, Your Honors, feel yourselves bound by the Charter of this Tribunal, as you have already informed us. Perhaps some of you have been assailed by doubts as to whether all the conditions of this Charter conform to the international law at present valid and to the generally recognized legal principles. But you have rejected such doubts, since you, as judges, consider yourselves bound by the rules which your four governments have agreed upon.

Jodl in his capacity as a general staff officer, may have felt himself bound, in a similar way, to assist in the orders of his supreme Commander-in-Chief, even if doubts regarding their admissibility in international law may have assailed him here and there. But he considered himself bound by his office to draw up plans for war without examining whether and under what conditions they were carried out; he had to formulate and issue thousands of orders, even if he disagreed on some points. Where neither remonstrances nor delaying tactics had any effect, he had to submit. As a general staff officer he had a purely assistant function. That he might be doing wrong while fulfilling this function according to the best of his knowledge and conscience never even occurred to him.

It is said now, Jodl should not have taken any part in this or that affair under any circumstances. What should he have done?

If one reproaches somebody with having acted in a certain way, one must be in a position to state what action would have been right in that situation.

It is declared that he should have resigned. This would of course be an easy way out. It could be taken in peacetime, but in wartime it was different.

Jodl tried repeatedly to get out of the OKW and to get posted to the front. Applications for resignation were altogether futile unless they were desired by the Fuehrer, as in the case of v. Brauchitsch and v. Leeb. In wartime he strictly forbade his generals to apply to resign. This was desertion, he said; the private in the front line could not resign either when he found things were unpleasant. The general also had to remain at the post where he was put. In 1944 this order was repeated in writing with all possible emphasis and given reasons. If a general wanted to quit for reasons of conscience, he was to know that the Fuehrer himself bore full and sole responsibility for his orders and that the generals' sole duty was to be responsible for their strict execution. Resignations on such grounds were not soldierlike and criminal. So Jodl could not resign. Should he perhaps have faked an illness? This also is desertion and, in wartime, a crime punishable by death. Is it possible seriously to expect an officer brought up in the good old traditions to betray his country in time of need like a coward—his country to which he had devoted all his life? The effect of which would be that he would no longer be able to look any new recruit in the face?

There was therefore only the third solution—Murder and revolution. In peacetime this would at the same time have meant civil war, in wartime the immediate collapse of the front and the end of the Reich. Was he then supposed to cry "Fiat justia percat patria?"

Really the prosecution seems to be of the opinion that such an attitude was to be demanded from the defendants. An astonishing idea! Whether murder and treason can ever be justified ethically had better be left to moralists and theologians to dispute over. For lawyers, at any rate, something like that cannot be a subject for discussion. To be obliged on pain of punishment to murder the head of the State? And, what is more, as a soldier? And in wartime? People who commit such crimes have always been punished, but to punish them for not doing so would be something new.

Naturally there are limits to legal obligations for the lawyer too, but in dilemmas which offer only this kind of solution, the old saying applies "Ultra posse nemo obligatur."

Jodl was no rebel. His conscience told him the Fatherland is in need, everybody at his post! Jodl's place was at the head of the operational staff of the armed forces. He did not get this post voluntarily, he did not keep it voluntarily. It was a hard duty. He fulfilled the task which this post imposed on him, according to the best of his ability and conscience—unto the bitter end.

Your Honors!

Allow me in conclusion to recall a personal reminiscence which throws more light on Jodl's personality.

I made his acquaintance about 20 years ago in the house of his uncle, the philosopher Friedrich Jodl, in Vienna. There I had a conversation with him on the education for a career as an officer. What the young captain said about it was of such moral earnestness, and so far from anything that could be called militarism that I have always retained it in my memory. I had no more contact with him of any sort until last autumn, when I received the surprising summons to defend him here. My first thought was "This gallant soldier must be helped." But I doubted whether to undertake this, since I am not a professional attorney. Still, when I met him in the court building for the first time, he said something to me which scattered all doubts "Rest assured, professor," he said, "if I felt a spark of guilt in me, I would not choose you as my defense counsel."

Your honors, I believe that a gentleman, and not a criminal speaks thus.

I ask that the colonel general Alfred Jodl be acquitted.

2. FINAL PLEA of Alfred Jodl

Mr. President, may it please the Tribunal, it is my unalterable belief that when history is being recorded in the days to come it will arrive at an objective and just verdict for the higher military leaders and their assistants. For they and together with them, the entire German Wehrmacht were confronted with an insoluble task; namely, to conduct a war which they had not wanted under a Commander-in-Chief whose confidence they did not possess and whom they themselves only trusted within limits; to conduct a war which they had not wanted with methods which frequently were in contradiction with their operational principles and their considered opinions which had been disregarded; to fight with troops and police forces which did not come under their full command and with an intelligence service which, in part, worked for the enemy. And all of this, together with the complete and clear realization that this war would decide the fate and the existence of our beloved country. They did not serve the powers of Hell and they did not serve a criminal but rather, their own people and their own country.

As far as I am concerned, I believe that no man can do more than to try to reach the highest goals possible for him. That, and nothing else, has always been the guiding principle for all my actions, and for that reason, gentlemen of the High Tribunal, no matter what verdict you may arrive at in my case, I shall leave this courtroom with my head held as high as when I entered it for the first time many months ago.

Whoever calls me a traitor to the honorable tradition of the German Army, or whoever asserts that I remained at my post for personal and egotistical reasons, him I shall call a traitor to the truth. In a war such as this, in which hundreds of thousands of women and children were annihilated by a carpet of bombs or through low-flying aviation, and a war in which partisans used every means which they considered expedient, in a war like that, even though they may appear questionable according to international law, harsh measures are no crime in morality or in conscience.

For I believe and avow that your duty toward your own people and your country stands above every other. To carry out this duty to me was honor and the highest law. This is something of which I am proud.

May this duty be supplanted in a happier future through an even higher one, through the duty toward mankind.

XIX. FRANZ VON PAPEN

1. FINAL ARGUMENT by Dr. Egon Kubuschok, Defense Counsel

Your Lordship, Gentlemen of the Court:

Papen is accused of taking part in a conspiracy to commit a crime against peace. With respect to time the prosecution limits the discussions of the facts of the case to the termination of his activity in Vienna. It admits that for the subsequent period, especially during his activity as ambassador in Ankara, no indications were found to support the accusation. In other words, according to this viewpoint Papen is said to have taken part in the preparatory actions for unleashing a war of aggression, which actions as regards time, the Prosecution has placed very far ahead, but he is not said to have actively participated in the immediate preparations and in the crime against the peace itself.

The Prosecution deals with Papen's activity as Reich Chancellor in the last pre-Nazi cabinet, with the part he played as vice-chancellor in Hitler's cabinet until 30 June 1934, and with his activity as Minister Extraordinary in Vienna. It was faced with the task of proving that during this period preparatory actions for a crime against peace actually took place and that Papen in full recognition of these aims collaborated in the preparations. Since the counts of the indictment deal with a field of activity which is in itself a legal one and since the criminal element cannot be introduced into the individual acts except in the direction of their aims, judgment of the Papen case lies essentially in the subjective field. The Prosecution is faced with the fact that Papen's own sentiments which often came to light and the policy which he actually pursued cannot be made to agree with the interpretation given by them. Therefore, they seize upon the premise that he is a double-faced opportunist who has sacrificed his real sentiments or those displayed to the existing conditions of the day and Hitler's will. In consequence it must be the task of the defense to bring about an elucidation of his personality in order to prove that Papen's actions and statements constitute a uniform consistent line and that his entire attitude de facto was such as to forbid connecting him with the offenses of the Charter; and that those of his actions which are under discussion must have been undertaken in pursuit of other aims than those which the Prosecution thinks it can recognize. Furthermore, the defense will outline Papen's entire political activity in its legality and within the framework of this activity it will deal with the actions considered punishable by the Prosecution and will finally submit counter-evidence showing that he actively worked against a political development as represented by the facts of the case brought forward in the indictment.

We shall arrive here at a just evaluation only if the discussion is kept away from the question of political suitability and correctness and if we accept the politician as he reveals himself to us with the opinions which he developed from origin and tradition. Moreover, an essential element in judging fairly will be the elimination of that knowledge we have now received at the trial from later years and concerning this later period.

We shall have to direct our considerations only to the time of the actions themselves, and only then shall we obtain a clear opinion of what Papen could see and expect at that time.

The Prosecution places the beginning of Papen's participation in the conspiracy on 1 June 1932, the date of his appointment as Reich Chancellor. However, it gives no answer to the question from what circumstances we are to see Papen's entry into the association of conspirators which is alleged to have been already in existence. It is impossible indeed to give an answer to this. Papen's activity as Reich Chancellor cannot either be regarded in the least as an activity in the sense of a Hitler conspiracy. The idea behind the formation of the cabinet, the entire leadership of the government during his chancellorship, and finally his departure from office are too clearly manifest to allow us to read into them a promotion of Nazi ideas, a paving the way for National Socialism or even a participation in a conspiracy allegedly already on foot. The Papen cabinet was formed at the time of an unusual economic, political, and parliamentary depression. Unusual means had already become necessary under the preceding cabinet. They were to be continued now in part on entirely new lines. In times of unusual crises a parliamentary legislative body probably always offers a certain difficulty. Therefore, even in the days of Bruening's cabinet the Reichstag was almost completely excluded from legislation and for all practical purposes was placed in the hands of the Reich President by means of the Notverordnung (Emergency Powers Law). It was now thought necessary to work on new lines. A cabinet of men who were experts in their own field but who were not bound to any party was to do away with these difficulties. Therefore, it was with this intention that the new cabinet was composed without the collaboration of parties. The tasks with which the new government was faced and the program necessarily resulting from the conditions of the time brought with them of necessity an attitude which was hostile to National Socialism. Any wish to strike at the roots of the depression must involve a fight on the part of government policy against the roots which would lead to the growth of National Socialism. These lay in discontent over economic conditions and the political situation abroad.

But on the other hand one could only think of doing peaceful and reconstructive work of any benefit if some modus vivendi could be found with the National Socialist Party. Not only according to constitutional law alone had the party the power to practically paralyze every government activity. With nothing more than the possibilities it had as regards propagandistic influence on the masses it offered the key to a possible pacification of inner-political conditions, the first prerequisite for the start of far-reaching economic measures.

Papen was faced with this situation in the last days of May 1932 when without anything of his doing and to his surprise he was commissioned by Hindenburg to form a presidential cabinet.

With regard to his governmental activity I wish to limit myself in my defense against the indictment to the following details:

The formation of the cabinet of 1 June 1932 took place contrary to previous parliamentary custom without any preceding consultation with the National Socialist Party. New pioneer economic laws with hitherto unknown financial commitments were decreed in order to fight unemployment and at the same time to eliminate the previous inexhaustible reservoir for the growth of the National Socialist Party. The purpose of the new economic measures and the limited financial possibilities were the conditions for a great enlargement of the frame of these laws in time. The labor market was to be stimulated by means which were to result from the future savings of public taxes if the measures were successful. The economic laws were based only on this exhausting of financial possibilities. Intentionally no use was made of unproductive public work projects or a stimulation of the labor market by armament orders. These long range economic measures which could be successful only in the case of an uninterrupted government policy made the problem of their acceptance by the Reichstag especially urgent. In the field of foreign politics Papen continued the course which the Bruening cabinet had pursued and in so doing he laid particular emphasis on those points of honor the recognition of which would have brought no damage to the other parties to the treaty, but which would have taken from the National Socialist Party a forceful means of propaganda in influencing the masses.

At the Conference of Lausanne Papen openly explained the innerpolitic situation. He pointed out that substantially ideological points were at stake the denial of which would give the National Socialists the impetus they desired. He explicitly emphasized that his efforts were the last attempt of a middle-class cabinet and that in the event his policy failed only National Socialism would profit from it.

Papen strove to make the National Socialist Party take a share in the responsibility without wishing to entrust it with the key position of the office of Reich Chancellor, a share in the responsibility which would have brought a party of negative politics to a recognition of actual conditions and which would thus have eliminated the attractive demagogic propaganda.

These first attempts by Papen to bring about a participation of the National Socialist movement in governmental work is already regarded by the Prosecution as paving the way for National Socialism.

However, this is nothing actually but an attempt to find a basis of some kind for practical governmental work, an attempt which had to take into account the experience of the Bruening cabinet and the development of the National Socialist Party. The fact could not be disregarded that already the Reich presidential election in March 1932 had brought Hitler 36.8 percent of all the votes. If one takes into consideration the fact that Hindenburg was the candidate on the opposite side and that Hindenburg's personality certainly caused many followers of the NSDAP to cast their vote in this special case in a way which was not in accordance with party directives, the fact follows that a heretofore hardly known opposition party arose which numerically outweighed by far all the other parties, and which in its position as an opponent was able to paralyze a priori any governmental activity. Hence followed, what was a foregone conclusion for Papen, the endeavor to get this party out of its status as an opposition party. This decision would be all the easier if the firm conviction were there that a share in the responsibility of government would turn the opposition party from its radical course and especially curb it considerably in its further development.

The best evaluation of Papen's governmental activity, seen from the standpoint of the National Socialists, comes from the fact that it was the National Socialist Party which opposed Papen's decisive economic legislation and with its vote of no confidence—pronounced jointly with the Communist Party—brought about the end of the Papen cabinet.

The subsequent negotiations of the still acting Reich Chancellor, especially the events of the 1 and 2 December 1932 show again his unequivocal attitude toward the NSDAP.

Papen proposed a violation of the constitution to Hindenburg. He wished to exhaust this last means in order to avoid a Hitler chancellorship. Schleicher prevented this solution on the grounds that in the event of a civil war which might then break out the government would not remain master of the situation with the existing police and military forces. In the face of these clear historical events the attempt of the Prosecution must remain without success to read the opposite into the facts and into these clearly recognizable, unequivocal motives.

What are then the points which the Prosecution believes that it can marshal in the face of this?

One, that Papen, in his first negotiation with Hitler and a short time after forming his government, consented to rescind the order prohibiting the wearing of uniforms, a measure which, even if it had merely been taken as a political compensation deal to achieve acceptance of the cabinet, would be something very natural according to parliamentary rules. Not only was the NSDAP the strongest party in the Reichstag, but also and especially on account of its general political work in public life it constituted a powerful factor of the first order. Therefore, it could not a priori be driven into a state of opposition if it was intended at all to pursue a realistic policy of long duration and to overcome the emergency in earnest by revolutionizing the economic program.

The repeal of the prohibition concerning uniforms was based also on more deep lying reasons, because it was a one-sided prohibition against one party and the opposing organizations were not limited in this respect and the acknowledgment of the law of equal treatment here could only eliminate dangerous propaganda material. The repeal of the prohibition concerning uniforms was furthermore by no means the announcement of a license for political acts of violence. The warning of the Reich President, announced with the proclamation of the decree, that acts of violence resulting from the decree would bring about an immediate prohibition of the organizations as such, according to all intelligent estimation should have had the effect of preventing damaging results.

The claim of the Prosecution that the repeal of the prohibition concerning uniforms was the main cause of the increase in the number of National Socialist seats at the July election is completely at variance with the facts. In this connection I will refer to the already mentioned result of the Reich presidential election of March 1932 at which the real situation did not even become completely manifest owing to the fact that Hindenburg was the candidate on the other side. The election of 21 July 1932 brought 13,700,000 National Socialist votes whereas in the Reich presidential election of 10 April 1932 Hitler had already received 13,400,000 votes. There are no grounds whatsoever for the assumption that the appearance of uniforms which, incidentally, had been replaced earlier by camouflaged standardized clothing even during the period of prohibition, might have had a determining influence on the outcome of the elections.

Much more important and in a negative sense more decisive for the outcome of the elections was certainly the general prohibition of political parades proclaimed by the Papen cabinet at the beginning of the election campaign. Public meetings and political parades are the most important expedient for a party under demagogic leadership. To have this taken away before the election was undoubtedly a much greater minus for the NSDAP than the previous plus it had received in the form of permission to wear uniforms.

In the letter of 13 November 1932 in which Papen again tries to induce Hitler to participate in the government, the Prosecution sees an effort which is undignified in its form and blameworthy in its essence to smooth the path of National Socialism to power. It forgets that Papen conducted the November elections in sharp opposition to the NSDAP, because he tried to remove the party from the key position in which without Hitler it was impossible numerically to form a majority from the Social Democrats inclusive of them and extending to the farthest right. It forgets that this result had not been achieved, that the key position even with 196 seats remained with Hitler and that, therefore, it was necessary to make another attempt to win Hitler over for a presidential cabinet under some conservative chancellor. It overlooks in this point that Papen's proposals here again had the definite aim of excluding the NSDAP from the Reich Chancellorship. For National Socialism a cabinet under a conservative politician, who according to the constitution would have had to determine the principles of the policy, would only have brought the party's influence on to this or that department, but in return for this influence it would have resulted also in its sharing the responsibility through its participation in the government. From the standpoint of opposition to National Socialism seen in retrospect one could indeed have welcomed nothing more than such a case in which the party's participation in the government limited in influence and had a share in the responsibility. The end of opposition policy which was so tremendously favorable for propaganda would undoubtedly have brought about the end of the growth of the National Socialist movement and the conversion of its radical elements.

The polite form of the letter was due to the official duty of the Reich Chancellor toward the leader of the strongest party in parliament. It is a foregone conclusion that in using this form and because of the purpose of the letter the writer does not refer to negative points but to those positive things which were suitable for use in any cooperation in the government.

In order to be able to construct from the period of Papen's Reichchancellorship something that is at least a foothold in proving his union of ideas with National Socialism the Prosecution has imputed to the temporary elimination of the Prussian government by the decree of 20 July 1932 intentions which in no way could pass the test of an objective examination.

The "coup d'etat" of 20 July, as the Prosecution terms the execution of the decree of 20 July, had not the slightest thing to do with promoting the National Socialists. In the opinion of the

Reich cabinet and according to the decisive judgment of Reich President von Hindenburg domestic policy showed the necessity for eliminating that toleration of Communist acts of terror which was practiced by the Prussian cabinet in office and which continuously and openly came to light. From this state of affairs Hindenburg drew his conclusions and issued the emergency decree (Notverordnung) of 20 July. By a decision of the then still entirely independent Reichsgericht (Reich supreme court) it was determined that this decree with regard to constitutional law was permissible within the framework of state political necessities.

If in carrying out this decree the request was indeed actually conveyed by police authorities to the minister of the interior who had been suspended, that he leave his offices, the word "coup d'etat" lends a meaning to this measure which goes far beyond what actually happened. Also in considering the effects of this measure an assumption that here the way was paved for National Socialism is not justified by any facts. The appointed Reich Commissioner Bracht belonged to the Center Party ("Zentrum"). The key position of police president in Berlin was intrusted to a man on whom the hitherto existing cabinet Braun had previously conferred the office of police president in Essen. Briefly, the result of the change was only that on the one hand an effective cooperation was now assured with the Reich authorities, and on the other hand new people filled some political positions which up to now had been the almost exclusive monopoly of the Social Democratic Party to an extent which from the point of view of parity could no longer be justified. That in filling these positions the National Socialists were passed over was a charge which was made against Papen time and again by the National Socialists.

Consequently, Papen's entire term of office in the government constitutes a clear line of realistic politics which show that on the one hand he did not let go the rudder in carrying out necessary and especially economic measures, but that on the other hand he tried to get a numerically almost overwhelming opposition party to collaborate. Papen's attitude toward the NSDAP became even more manifest after he had been asked by the Reich President late in November 1932 to collaborate in the effort to form a new cabinet.

In this he showed he had the courage to take the most extreme consequences. Realizing that it was impossible to go on with a non-National Socialist government according to parliamentary principles, he submitted to the Reich President the proposal to rule with the aid of armed force even if he thus caused a violation of the constitution and risked causing a civil war.

It is just as difficult to reconcile oneself with such a proposal, when one adheres to thinking along lines of constitution law as it is impossible to overlook in retrospect that the proposed violation of the constitution limited in time was probably the only possibility to avoid the solution which then became necessary on 30 January 1933.

Any other temporary solution could not have had a satisfactory result. Sooner or later the opposition party would have forced the resignation of any non-National Socialist cabinet. Thus, the political unrest with its consequences on the entire economic life would have become a latent state. A state of affairs, which, by its alternate effect, was only suited to strengthen the National-Socialist movement and thus to bring it by force to a numerical strength which in the end would have resulted in the fulfilment of its entire totalitarian claim for an assuming unlimited power.

The part played by Papen in the formation of the cabinet of 30 January 1933 might in itself be disregarded. It is sufficient to be aware of the fact that all endeavors to bring about a parliamentary government without Hitler were already impossible from a purely numerical standpoint, and that such a parliamentary solution with Hitler was wrecked by his opposition. A measure born out of political and constitutional necessity cannot, according to the indictment, be considered as evidence of intended planning of a crime in the sense of the Charter. The significance of this count of the indictment must be considered. By maintaining all parliamentary rules, a government is appointed by Hindenburg in his capacity of chief of state, the head of which is the leader of the strongest party. This government when presented before the parliament finds an overwhelming majority. That which Papen is accused of, the knowledge of the activities of the National Socialist party in the past, holds true to the same extent also for the other participants, Hindenburg and all consenting members of parliament. The reproach leveled against Papen thus includes also an accusation against Hindenburg and the entire consenting parliament. For this consideration alone, the unique attempt of including in an indictment a self-evident, constitutional procedure of a sovereign state must probably fail.

If despite this fact I go into the events which occurred before the formation of the government, it is only in order to show clearly here, too, the unequivocal standpoint of Papen, who on one hand did not wish to close his eyes to the real facts, but on the other hand desired to undertake everything in order to prevent the danger of an uncontrollable development of this new formation. The Prosecution considers the Hitler-Papen meeting at the home of Schroeder on 4 January as being the beginning of the efforts made for the formation of the Government of 30 January. As a matter of fact the meeting at Schroeder's was nothing else than an exchange of ideas about the situation of the moment during which Papen and Hitler maintained their previous opinions and Papen pointed out that Hindenburg, owing to the apprehensions which he expressed, would in no case agree to Hitler's taking the position of Reich Chancellor. Hitler would have to accept the position of Vice-Chancellor, since Hindenburg took the standpoint that the possibility for a further development would only follow after he had proven himself over a long period of time.

This meeting in Koeln took place upon Hitler's request. I refer in this instance to Schroeder's communique published by the press, which I submitted as Document 9 of the defense, and which I erroneously indicated during the cross-examination as being a joint communique issued by Papen and Schroeder. Schroeder establishes in it that he himself took the first step toward this meeting.

The fact that this meeting has in no way been the basis for the formation of the Government of 30 January is obvious from the fact that the discussion was immediately reported by Papen to Schleicher and Hindenburg and that during all the following time until 22 January Papen had nothing to do with the solution of the governmental problem. Schleicher as well as Hindenburg endeavored to obtain parliamentary support for the Schleicher cabinet through negotiations with the leaders of parties, efforts which failed, however, due to the weight of the political facts. The main effort was to split up the National Socialist party by inviting the collaboration of the Strasser wing in the Government. These efforts failed when Hitler's position became so strong after the result of the elections in Lippe that he regained absolute control over the Party against all attempts to split it up. The outcome of the elections in Lippe of 15 January 1933 was generally considered as a barometer of public opinion with respect to the political situation. All parties had mobilized their entire organization and propaganda apparatus, and therefore one could draw a conclusion from the result of this election concerning the general public opinion. The result showed that the losses suffered during the November elections were almost completely made up. Thus everybody could recognize that the decline of the National Socialist movement was stopped and that with the continuance of the momentary political and economic situation a further gain was to be expected.

The necessity for a decision became more and more urgent when on 20 January 1933 the Council of Seniors of the Reichstag—through its convocation of the Reichstag for 31 January—granted to Schleicher's cabinet practically only a period of grace up to that date. For a vote of no confidence introduced by the left and the NSDAP meant its immediate fall. The meeting in the house of Ribbentrop on 22 January, when Hindenburg wanted to learn through his son and the state secretary of the Presidential Chancellery Dr. Meissner Hitler's opinions about the political situation, has to be considered from this point of view.

The part Meissner played in it and also his general part in the formation of the Hitler Government cannot be established with certainty by means of the data at hand. In any case, being a member of the immediate circle around Hindenburg who finally took the decisive decision, he was by no means uninterested in the matters. His personality has been judged at least very differently. Because of his own interest in the case he can in no event be considered as a classical witness for the judgment of the events of that time. His testimony bears certainly in one point the stamp of unlikeliness. He maintains that he opposed Hindenburg's decision after the latter decided to appoint Hitler to the office of Reich Chancellor. This is said by the same man who during the session of the Cabinet concerning the "Enabling Law" (Ermaechtigungsgesetz) did not consider it necessary to maintain the right of the Reich President to proclaim laws, the same man who after the events of 30 June 1934 obviously collaborated in isolating Hindenburg from all those who could give him a true representation of the events. I make these remarks because a part of a Meissner Affidavit was read during the hearing of evidence against Papen. Although according to the decision of the Tribunal, the contents (of the affidavit) which was read shall not constitute a basis for the verdict, during the cross-examination questions were nevertheless asked which referred to the affidavit; this could cause an erroneous judgment. Besides, the decision of the Tribunal relieves me of the obligation to discuss in detail the contents of the affidavit and to indicate a number of inaccuracies which could be easily refuted.

The hearing of evidence has shown that until 28 January, Papen made no attempts whatsoever as regards the formation of a Government. On that day, in view of the imminent convocation of the Reichstag, Schleicher had to bring about a decision. On 1 December 1932 he advised Hindenburg against an open fight against the parliament and stated that the employment of the armed forces in a possible civil war would be hopeless. Now he thought that he himself could find no other solution than to beg to be permitted the use of those forces which he previously considered as being insufficient. But since no change in the situation had occurred since that time which could offer reasons for Schleicher's change of opinion, since moreover the position of the NSDAP was strengthened by the elections in Lippe and the general political situation had become still more tense through the attitude of the parties, Hindenburg upheld his decision of 2 December. Thus, the resignation of the whole Schleicher cabinet was inevitable. Now the events had to take their course, which necessarily and logically they had to follow if the possible use of arms was to be avoided. There was only one solution now—negotiations with Hitler. Hindenburg commissioned Papen to conduct the negotiations for the formation of the government. On Hitler's part it was clear that he would maintain his inflexible demands namely to take over himself the office of Reich Chancellor. The task, clearly recognized by Papen, was now to set limits to the political activities of the new party which had not proved itself yet on such a large scale.

First of all, a change of course had to be avoided in those ministries in which any radicalism would have been particularly detrimental, namely the Foreign Office and the War Ministry. Hindenburg reserved for himself the right of filling these two key positions. In order not to entrust the new Chancellor with appointing the remaining ministers, as had been customary heretofore, Papen was charged with this task in his capacity of homo regius. He succeeded in limiting the number of National Socialist ministers to a minimum. Three National Socialist members of the Government faced eight non-National Socialists who for the main part were taken over from the former cabinet and who guaranteed a steady policy in their ministries. That was not all; within the framework of the constitution the authority of the Reich Chancellor was to be limited in a manner never known before. Papen was appointed to the position of Vice-Chancellor. His function was not connected with a special department but mainly intended to constitute a counterpoise to the position of the Reich Chancellor. It was decided that Hitler in his capacity of Reich Chancellor should report to the Reich President von Hindenburg only in the presence of the Vice-Chancellor. Thus, a certain control was established when the Reich President formed his opinion about the requests presented by the Reich Chancellor. In view of Hindenburg's personality, of which, according to human foresight, one could expect a quite considerable influence upon Hitler, this control over the information Hindenburg received promised that a shift toward a radical course would be avoided. This was the part the defendant had in the formation of the Hitler Government! The prosecution sees herein a decisive, conscious step toward the transfer of full power to National Socialism.

By considering the case objectively, even in retrospect, one can indeed arrive only at the conclusion that in view of the inevitable necessity of ceding the leadership of the cabinet to the National Socialist party, all possibilities for limiting the importance of this measure were exhausted. The position of Reich Chancellor left to National Socialism and the appointment of only two National Socialist ministers represented the limit of Hitler's originally much more extensive demands and this limit was only reached after long efforts.

For the consideration of the present proceedings it would not matter if the solution adopted on 30 January was the only possible one or not. Even if one were of a different opinion, the only thing that matters in looking at the case from a criminal angle is whether Papen could consider this solution as a necessity or only as a mere political expediency. Even if, contrary to all the facts one regarded his opinion as a Utopia, it should be taken into consideration from the point of view of penal law that one could only speak of a guilt if he had known the future consequences and the future plans of aggression and if in spite of this he had collaborated in the formation of the Government. The facts just mentioned have proved that there is not even the slightest supposition for this.

In considering the case it is of especially decisive importance also that the two ministries which are the most important or which are the only ones to play a part at all in connection with the accusation of breaking the peace, the Foreign Office and the War Ministry, were placed in the hands of men who enjoyed Hindenburg's confidence and had no connection with Hitler and of whom an unbiased direction of the ministries could be expected. It is not unimportant to consider in this instance what expectation one might have from Hitler's personality and his future policy.

The leader of the opposition party takes for the first time the responsibility. A party, the structure and development of which could certainly occasion many objections and apprehensions. A party which had developed on the basis of an absolutely negative attitude toward the hitherto existing Government leadership. A party which with its noisy appearance had certainly made many concessions with regard to the constitution of its membership. A party which had laid down a new program including points some of which seemed a long way from reality and impossible to carry out and which caused many objections, but which—and this is the only essential fact within the scope of our consideration of the case—apparently did not have any criminal character.

On the other hand one cannot disregard the experience taught by life and history that propaganda and responsible work are two very different things. That a party which develops from nothing needs, according to experience, more negative and noisy propaganda than an old existing party. Even if the cabinet of 30 January had consisted of National Socialists exclusively, even if a moderating element had not existed in Hindenburg's personality, one could have assumed according to the rules of reason and experience that Hitler, who acceded to power by means of propaganda, would take into account the existing conditions in his practical, responsible work and would show himself in his activities essentially different from what he appeared during the propagandistic preparation of the ascension to power.

A small example had already shown the difference between a party in opposition and in responsible Government work. The same National Socialists with their same program and their same propaganda who now, on the 30th of January took possession of the position of Reich Chancellor, had already held the leadership or participated in the governments of some German states. We see Frick, the leader of the Reichstag faction act as responsible minister in Thuringia. His field of action included even the police and we see the National Socialists zealously tackling some economic problems in these states. But we did not see them commit excesses or not even pursue an unreasonable policy which would have been at least in approximate agreement with their propaganda. Could it not be expected then that in the Reich, together with the greater tasks, the natural sense of responsibility would also increase? And that especially in view of the safety measures taken, matters would not take a dangerous course?

It is not superfluous to discuss Hitler's personality in this connection. Hitler, especially after the failure of the attempt to split off the Strasser group, was the absolute autocrat of his party. Undoubtedly he did not show in the leadership of his party, in his speeches, and in his appearance that reserve which would have been a matter of course for the leader of such a big party. However, all signs indicated that Hitler had the party under control to such an extent that he would be able to put through also unpopular measures which had to be taken under the pressure of reality. In the questions concerning the participation in the

Government he had pursued a policy wise in its tactics but unpopular with the impatient masses, because he took the facts into account.

Could it not be expected then that this man who now had reached his aim namely to take over the leadership of the cabinet would abandon the unrealistic ideas he advocated when he was in the ranks of the opposition and would submit to the real exigencies of public and international life? It is also a general fact known from experience that a man confronted with particularly great aims and with a particularly big responsibility grows as a ruler and as a man in proportion with these aims and this responsibility. In view of this general historic experience one could not assume that a man entrusted with responsibility, after certain initial attempts which could be interpreted as being promising, would soon revert to the thesis of his former opposition ideas; that after a couple of years this man would throw overboard every positive idea he emphasized—I remember for instance Hitler professing his adherence to the Christian foundations of the State —and that he would even surpass the negative ideas he formerly advocated and increased to an immeasurable extent his aims and his methods. We see now Hitler's full development before us and we are perhaps tempted to interpret his actions during the last years, because they represent something which is so monstrous and therefore so particularly impressive, as being the manifestations of his whole personality, while assuming that during the preceding time he had already been the same.

It is not possible, within the scope of this trial and based upon the events, upon his speeches, and especially his actions, to interpret and to understand Hitler psychologically from the beginning of his political appearance until its end. His well-known fear of disclosing himself and the mistrust he showed more and more toward nearly everybody in his sphere of life make it particularly difficult to judge his personality.

The individual facts which occurred, lead however to the certain conclusion that Papen too, despite the fact that he was close to Hitler, could not suspect him in 1933 of being the man he showed himself during later years.

If Papen, in agreement with Hindenburg's wishes and while executing his orders in his capacity of homo regius, did everything in order to prevent the possibility of a radical development, fully aware of his responsibility, he also strove with all his energy toward the same goal over and beyond the obligations of this task. After the formation of the cabinet he did not cross his arms and take the easy way, which would have been favorable for him from an opportunist point of view. He undertook to form a counterweight to the National Socialists at the elections of 5 March 1933 through a union of the conservative parties of the right. For someone who would have adopted the National Socialist ideas or even agreed to offer blind obedience to their leader, the next thing to do would have been to put an end to the opposition of this large newly constituted conservative group and to let it make its way toward a union with the party which had recently come to power, a way which at that time appeared to many as absolutely natural. Papen entered the election contest as leader and organizer of the oppositional group "Black-White-Red" (Schwarz-Weiss-Rot). His speeches of that time, excerpts of which I submitted in the document book, show a clear picture of his aims and intentions. They were the affirmation of a nationalistic idea, free from the propaganda licentiousness of National Socialism and its doctrines. In any case, his program was in irreconcilable contrast to what later turned out to be the unpredictable extension and unlimited transgression of the confirmed aims of the NSDAP.

The formation of the political action block "Black-White-Red" was to guarantee what Papen had tried to achieve by the composition of the Cabinet of 30 January: a coalition cabinet which as an inevitable result of parliamentary rules and the entire political situation left the post of Reich Chancellor to the leader of the strongest party, who however was forced to rule in the framework of a coalition cabinet with all the limitations which derived from it.

I believe that I have made it sufficiently clear by these statements that Papen's collaboration in the formation of the Cabinet of January 30 does not constitute an attempt to place National Socialism in a position of exclusive power. The opposite has been proven by facts.

With regard to the defense I have gone far beyond what would be necessary in any way for the denial of a verdict of guilty. If even at that stage somebody had cooperated in really giving the National Socialist party an exclusive influence, there still would not be any proof to see in this of a preparatory action for the punishable crime in the sense of the accusation. The program laid down by the National Socialist Party and the statements of the party leader of that time, which in view of their propaganda value must be construed much more narrowly from an objective angle, can be misinterpreted as much as one likes, and one may read into them in retrospect any number of facts which became recognizable later, one still cannot see in all this the way to the crimes set out in the Charter.

In Papen's activities as Vice-Chancellor during the period from 30 January 1933 to 30 June 1934, the Prosecution thinks it can see a continuation of his efforts toward a conspiracy for the purpose of consolidating the position in power of the ruling National Socialists. The Prosecution has charged him in this connection with collaboration in the various laws passed during this period by the government, which according to their opinion merely served the aforementioned aims. I will demonstrate, however, how the work of the defendant developed in detail, in particular that he did not deviate from his original policy. The Prosecution deals with a number of laws passed by the cabinet in the beginning which must be considered as a compromise as far as their political format is concerned, a compromise between the demands of the National Socialists, and the conservative ideas of the other members of the cabinet.

We see problems being touched which National Socialism made the subject of discussion and propaganda for years. The conservative members of the cabinet were then facing the following situation:

The strongest party and the Reich Chancellor could not entirely ignore these questions, they had to be solved in some form. The principle of every coalition cabinet entails a compromise for both parties. In compromising, the other party need not change its opinion. If, for example, in a coalition cabinet, which is led by a labor party, the program of the labor government which perhaps contemplates a general socialization to be carried out in practice, the collaboration of the other members of the cabinet will consist in preventing a general extension of the measure and in limiting its effect to those cases, which in their opinion deviate least from the course followed before. One cannot expect from the strongest party and from its leader who occupies the constitutional position of Reich Chancellor to continue the policy of his predecessors. The other members of the coalition must make sacrifices if any governmental activity is ever to be possible.

Since in the framework of this Trial we do not have to judge considerations of political expediency and not even moral conceptions, but only whether what happened was done with a criminal purpose in the sense of the Charter the task set for the defense is comparatively simple.

In the legislation we see the ideological problems raised by National Socialism partly solved. We must concede to the non-National Socialist cabinet members involved that, in considering these laws, they thought about a final solution and not about an intermediary stage. Their basis was the experience of the past, the experience of the political life of all countries, namely that a problem settled by law is normally concluded. It was unthinkable—for it was incompatible with a normal governmental activity and the preservation of the authority of a legislative body—that after the issuance of a law, a problem which had already been dealt with should continually be considered anew in the following years and each time be brought to a more radical solution. Papen has proved that he carefully tried to maintain the concessions made to the opponent within a more or less endurable limit. The fact that in the laws of that time, National Socialist doctrines appear only rarely and in moderate terms, shows sufficiently that the composition of the cabinet of that time with regard to personalities had a retarding influence on the penetration of National Socialist ideas.

Without this influence it would not be understandable why Hitler undertook a relatively unpopular limitation of the previously advocated aims of the party.

The hand of the defendant which checked and corrected the shaping of the individual laws is clearly discernible. The classic example for this are his endeavors in bringing about the Enabling Act (Ermaechtigungsgesetz). It was a technical necessity to the legislation during the crisis of that time. The preceding years had shown that owing to the time-consuming deliberations in the Reichstag urgently needed legislation was not acted upon satisfactorily. Therefore, already in Bruening's time, almost all the legislative power was practically put in the hands of the Reich President, so that the important laws were issued in the form of emergency decrees by unilateral legislative acts of the Reich President. If, due to these compelling reasons, the legislative power could not in practice be left in the hands of the Reichstag, the legislative power thus transferred to the cabinet constituted a compromise. As shown by the result of the Reichstag vote concerning the Enabling Act, none of the parties including the Zentrum party failed to recognize this. The question now arises as to whether the right of the cabinet, where, according to the constitution the Reich Chancellor had to establish the fundamental lines of policy, would be limited by the fact that the right of proclaiming laws was reserved for the Reich President. The State Secretary of the Reich President himself declared in a cabinet session that he did not think it necessary to charge Hindenburg with the responsibility of the entire legislation because of the latter's right to proclaim laws. Papen's direct intervention with Hindenburg immediately afterward remained without success, as stated by the witness Tschirschky.

Then, we see Papen again in the foreground when the problem of anti-Semitism had its first legal result. At that time, the situation was the following:

There were the broad masses who for years had been influenced in this direction, a predominantly National Socialist group who had consistent anti-Semitism as one point on their program. We saw the effects of propaganda on the masses which manifested themselves in the aforementioned individual actions, during the first weeks after the formation of the Hitler government.

The conclusions to be drawn from this situation were clear. A problem which has been stirred up, which had already a pernicious outcome in practice, had to be legally settled. It was clear that in this question National Socialism through its exaggerated propaganda had contracted a certain obligation toward its followers. It was difficult to determine the extent of the legal limitation which for the incited masses always remained a disappointment. The way out could only be a compromise. The settlement was directed to a field where a change in the hitherto existing situation seemed to be the least severe.

Whereas in accordance with the contents of the "Professional Government Employee law" (Berufsbeamtengesetz) only those were dismissed from their position who occupied their position not on account of their professional qualification, but due to their membership in a political party, all Jewish government employees who were appointed after 1918 were also dismissed. As a rule, a right of pension was maintained. Papen's successful endeavor aimed to limit numerically the effect on the Jewish government employees concerned. He had an audience with Hindenburg who was especially approachable on the idea of protecting war veterans. Through Hindenburg's personal influence on Hitler, Jewish war veterans and dependents of fallen soldiers were then excepted from this law.

Since an overwhelming part of the young government employees who had been employed since 1914 were war veterans, the numerical effect of this exertion was quite considerable. This is made especially clear by the official figures published concerning the conditions in the legal profession, and which were presented in Defense Exhibit 33. Furthermore, the defendant is charged for the measures taken against the labor unions. First consideration must be given to the fact that the measures were not carried out by a regulation based on a Reich law. It is moreover important that with the reshaping of affairs the continuation of labor unions with a Social Democratic character and a similar influence might have appeared as an anachronism.

Papen's attitude with respect to the labor union problem is shown by his speech of 4 March 1933, Document 10. Here, too, it must be considered that at the time the measures were taken, one could not have forseen the extent of their further development. Considering its many rather sound ideas for the settlement of social questions, the German Labor Front at the time of its foundation did not merit the judgment it now deserves for the coercive measures taken at the end.

The amnesty decree, as shown by the hearing of evidence, is no novelty. Also in 1922, in order to set an end to a period of political unrest, an amnesty decree was issued, which also pardoned crimes subject to death sentence. The establishment of special courts was a measure of expediency to speed up the sentencing of political offenders, because longer normal proceedings did not safeguard the desired momentum of warning. It is significant that the order concerning crimes of violence was applied for the first time during Papen's Reich chancellorship, National-Socialists in the case of the Potempa murderers. Thus it is erroneous to see in the nature of those laws a commendation of actions committed or a promotion of the Nazi idea.

If the Prosecution, in criticizing Papen's legislative activity during this time, still engages in considering the Political Coordination Act for the states (Laender) of 31 March 1933, it touches first of all a question of home policy, which is really far outside of a field which could justify a discussion in the sense of the Indictment.

If the indication of the Prosecution should have the sole purpose of showing that Papen has in this respect changed the point of view advocated previously, it must be said here that political opinions in general subject to alterations and often must be altered, and that from a change of conception with respect to political expediency measures one can by no means draw a conclusion as to a general change of opinion. As a matter of fact, the first Statthalter Act was designed to eliminate a dualism between the Reich and the States (Laender), which Papen had always considered as disadvantageous. Papen has always advocated, especially with respect to Prussia, a solution in the sense of Bismarck's time, when the office of President of the Prussian Council of Ministers and that of Reich Chancellor were united in one person.

Thus, this question which ought to be touched only in passing involves not even a change of opinion, much less a change of sentiment.

The following must be considered with respect to the legislative work in the cabinet of the defendant von Papen: His position of vice-chancellor was without an administrative province. The influence, even in political questions, which the head of a regular ministry had in cabinet sessions did therefore not exist in the case of Papen. He could only express misgivings or objections from a general point of view without being able to base them on departmental grounds.

Considering the small number of cabinet session protocols available—despite all my efforts I did not succeed in procuring the remaining ones—the extent of Papen's opposition and that of the other ministers cannot be proved by documents. The fact that he voiced this opposition was revealed in the hearing of evidence. But, as admitted, the success was a small one. Thus, it is the duty of the defense to investigate deeper the reasons why Hitler's powerful position gradually increased and why the influence of the non-National-Socialist ministers became smaller, in short, why the guarantees failed which had been provided when the government was formed on 30 January.

At the beginning the course of the cabinet sessions did not deviate from the normal procedure. The questions which arose were made the subject of discussions. Hitler did not try to carry through at any cost the bills which were rejected for good reasons. A clear description to that effect is given by the affidavit of the former minister Hugenberg (*Def. Exhibit 88*).

The elections of 5 March, with the overwhelming success of the National Socialist party brought along a substantial change. Beyond its purely parliamentary effects, Hitler was strengthened in his conviction of being the deputy of the German people. He thought that now the time had come for him to make use of his right, granted to him by article 56 of the constitution of the Reich, to determine in his capacity of Reich Chancellor the fundamental lines of policy even in case of an opposition on the part of the ministers.

With respect to the constitutional situation I refer to Document 22 which shows that in questions of fundamental policy even a majority decision of the ministers was without effect against the decision of the Reich Chancellor. Now, Hitler became very unapproachable to any suggestions. In case of a relevant opposition he thought to have against him an oppositional phalanx, and soon it became evident that objections made in the cabinet were of no use to change Hitler's attitude. At the best, one could hope, as the defendant v. Neurath declared as a witness, to influence Hitler outside the cabinet in a direct discussion. The essential factors in Hitler's development into an autocrat were his increasingly strengthened position with regard to Hindenburg and his ever increasing influence on the Reich Defense Minister von Blomberg.

Hitler's first measures which, in Hindenburg's eyes, showed his endeavors toward the establishment of a strict order had constantly improved Hitler's personal relations with Hindenburg. He skillfully understood to adjust himself to Hindenburg's mentality. Therefore, he succeeded very soon to abolish the original stipulation concerning the obligation of making joint reports. Thus, Papen was deprived of the major possibility to influence Hindenburg.

The attitude of the War Minister von Blomberg was the second decisive point in Hitler's development.

The Wehrmacht was a factor of power. Hitler knew that its men and officers were probably essentially unpolitical, but that by no means—especially as far as its leadership was concerned—they were inclined to have National Socialist ideas. An extensively radical course of the government might therefore always give rise to resistance on the part of the Wehrmacht. It must be added that owing to his personality Hindenburg listened especially willingly to reports coming from military circles. As long as the War Minister was not a disciple of Hitler, the latter was prevented from carrying out any radical ideas.

It is not yet possible today to gain an historically clear picture, which would permit one to explain the reason for Hitler's influence on Blomberg. We must state the fact that Blomberg became very soon an ardent admirer of Hitler, and that on his part no sort of resistance could be expected against any extensive radical development whatsoever of Hitler's policy. The 30th of June 1934 proved this very clearly.

In retrospect the logical consequence of this development becomes clear. Hitler could only be impressed by power. The Wehrmacht with its strength of that time was, especially in relation to the position of the Reich President von Hindenburg, a factor of power with which, at the beginning, even Hitler and his party would not have been able to cope in case of a commitment of forces. That is the reason for Hitler's endeavor to win Hindenburg's confidence, that is the reason for his comparatively cautious maneuvering during the time before Hindenburg's death, which by no means allowed to presume a further stronger development. From the time of Hindenburg's death, Hitler appeared as a dictator without consideration for anything and who at least in the field of internal policy displayed his ruthless power policy.

In addition to the legislative activity of the cabinet, the Prosecution dealt with the question to what extent Papen was responsible for the oppression of political opponents and for certain acts of violence which occurred during the period which the terminology of that time called "national revolution."

During the cross-examination Papen was asked whether he knew about the arrest and mistreatment of individual Communist and Social-Democratic personages named to him. Papen gave an essentially negative answer. However, he knew that due to the Decree for the Protection of People and State issued by the Reich President, measures had been taken which suppressed the personal liberty of a great number of leftists. The decree was issued by the Reich President outside Papen's responsibility and by suppression of the relevant constitutional stipulations. It was established under the impression created by the Reichstag fire, an event which up to the present day has not been clearly elucidated, but for which the official statement that Communist circles had instigated the arson seemed to be absolutely believable. Especially since the search of the Liebknecht House, the Communist headquarters, produced, according to Goering's declaration, very serious evidence concerning the actions planned against the Reich cabinet. The inquiry was held by a judge of the Reichsgericht (Reich Supreme Court), a personality whose impartiality was beyond any doubt. Therefore, Papen could understand the legal security measures which the administration of the interior thought necessary.

But knowledge of the arrest of those politicians is by no means connected eo ipso with the knowledge of the details and of the extent of the measures taken at that time.

During the years of the National Socialist regime we learned again and again that the knowledge of acts of violence remained restricted to the narrow circle of the direct participants. The measures taken before the release of an internee in order to reduce him to silence were evidently successful. Thus, we see again and again that there was always only a small circle of knowing persons which was composed of the immediate environment of returned internees. This explains the fact which sometimes amazes one afterward, namely, that quite large circles were not informed of the kind and extent of the excesses committed. It is evident that close relatives and similarly thinking friends of the politicians arrested at that time knew of what had happened to their people. The extent of the secrecy is shown best by the fact that the witness Gisevius assumes that the conditions in concentration camps did not become generally known to Gestapo officials until 1935.

Thus, it seems to me absolutely explainable, that Papen knew very little about the measures, which during the first months were almost exclusively taken against political opponents of National Socialism coming from leftist circles, at any rate, that his knowledge did not go beyond the fact, that in this respect, arrests were made within the scope of the "Decree for the Protection of Nation and State."

It was a different matter, however, with the later encroachments on the rights of church offices and organizations, which to a large extent appealed to him and whom he at once tried to help energetically. The same holds true for the measures in connection with 30 June 1934, which will be discussed later on.

In any case it is a decisive fact that the measures as far as they were outside the law were subject to the jurisdiction of the police and the Ministry of the Interior. The law itself is an emergency decree of Hindenburg's. It came about legally. The now broadened conception of protective custody does not in itself constitute a crime.

With regard to anti-Jewish excesses the Prosecution accused Papen of having sent a telegram to the New York Times on 25 March 1933 describing the situation in Germany as quiet so far, and of having pointed out that individual actions had occurred but were now prohibited by an order from Hitler.

From the sources which were accessible to him Papen had of course heard of the excesses of which individual SA men had become guilty in this period which was still unsettled politically. If, on 12 March 1933, Hitler categorically forbade such actions by individuals and ordered the strictest punishment for any culprits in the future, Papen could assume with a clear conscience that this order which emanated from the highest authority would henceforth be obeyed.

In passing, it is not uninteresting in this respect to refer to a public announcement of the "League of Jewish Front Soldiers" of 25 March 1933. This proclamation also stated the fact that the situation with respect to the Jewish population was in general quiet and that excesses were confined to actions by individuals, which had now been forbidden by Hitler. (I shall submit this publication of the League in my Document Book for the Reich Government.)

The same standpoint was taken in a publication of the American Chamber of Commerce in Cologne on 25 March 1933, which publication I shall also present during the hearing of evidence for the Reich Government.

The Jewish boycott which was announced some days later and which was carried out on 1 April 1933 was, contrary to the opinion of the Prosecution, no government measure but exclusively a party measure which Papen, too, sharply opposed as well as others in the cabinet. The publication of the "Times," submitted with Neurath's defense Exhibit 9, proves that over and beyond this Papen made representations to Hindenburg and called for the latter's intervention with Hitler.

For the rest, one must take into consideration the fact that the Jewish boycott had been announced as a defensive countermeasure which was to be limited in time and to be extended only to business life. It had been expressly ordered that any use of force was forbidden and that excesses were to be prevented by corresponding measures. In its presentation of matters of domestic policy the Prosecution has merely shown that through the measures taken the position of the National Socialist party was to be strengthened, so that it should then be possible to turn to the aims of the foreign policy of force which had been decided upon beforehand. Still more important than the discussion of domestic conditions is therefore an examination of the foreign policy of the Reich during the time Papen was Vice Chancellor.

Hindenburg's reservation, that he would appoint the Foreign Minister and the appointment of von Neurath to this post when he had been Foreign Minister until then and was not a National Socialist, leads one necessarily to expect a development of foreign policy along the course hitherto taken.

Hitler's first measures seemed not only to justify this expectation but even to go beyond it. The first speech on matters of foreign policy held on 17 May 1933 dealt with Germany's relations to Poland which in the past had never been entirely satisfactory. The annexation by the Poland which had newly come into existence of large territories formerly belonging to the German Reich had brought with it a latent tension between these states. Hitler was the first to take up the problem and to resolve, according to his declaration in the Reichstag, to bring about a policy of friendship with Poland by recognizing the Polish state and its needs. If one considers the fact that this thought of renouncing all claims to a revision against Poland was not only generally unpopular but also stood in sharp opposition to previous propaganda, it was impossible to foresee the development of later years. One was necessarily convinced that here was an internally strong government supporting its domestic reconstruction with a policy of peace abroad.

Germany's adherence to the Four Power Pact, and its renewed profession of adherence to Locarno serve to underline this conviction. The struggle in foreign politics for ideological values lay in a different direction. The question of eliminating the clause in the Versailles Treaty which stipulates Germany's exclusive guilt and the question of equal rights for this large country which had pursued a persistent policy of peace since 1918 were demands which on one hand did not seem to burden the other side with unbearable sacrifices and which were yet suited to remove from the German people an ideological burden which it considered a pressing one.

Germany's withdrawal from the disarmament conference must be considered from these viewpoints. It took place after long drawn out negotiations had produced no positive results and because it was in no way evident that the powers were inclined to bring about in future a fulfillment of the German demands. The declaration of the Reich Government and of Hindenburg that this step was to be looked upon as a tactical step, and that the same objectives were to be retained, namely the preservation of peace under recognition of equal rights, all this therefore had to appear credible and reasonable.

From the same points of view Papen also approved of this setup. With regard to the simultaneous withdrawal from the League of Nations, opinions could have differed. Here, too, one might hold the view that the withdrawal was necessary as a movement of protest and that one could prove through factual efforts in the matter itself that it was intended to adhere to a policy of peace.

Papen figured among those who felt obliged to advise against withdrawal from the League of Nations, even though he himself had experienced as Reich Chancellor that the negotiations in the large and manifold assembly of the League caused certain difficulties in some questions. On the other hand, however, he was so convinced of the institution of the League of Nations as an instrument of agreement and of facilitation of the technical possibilities for agreement that he wished to avoid withdrawal from the League of Nations. He advocated this opinion very strongly. Since he could not persuade Hitler in Berlin, he followed him to Munich shortly before the decision in order to lay his well-founded opinion before him there. Ergo we see Papen here working actively in a field for which in his position as Vice Chancellor he actually has no responsibility aiming at a solution which if one takes as a basis the views of the Prosecution concerning the withdrawal from the League of Nations can only be considered as a step toward peace.

Because of the fundamental importance of the withdrawal from the League of Nations the measure was submitted to the German people in form of a plebiscite enabling it to state its opinion. On the occasion of this plebiscite, Hitler, the government, and Hindenburg issued proclamations which emphasized expressly that this step was not intended to constitute a change of policy but merely a change of method. Preparations for the plebiscite were carried out in line with this statement.

The Prosecution accuses Papen of having glorified in his Essen speech the successes of Hitler's government and of having advocated an unconditionally affirmative attitude toward the questions to be decided by the plebiscite.

If Papen did this, it was because he felt obliged to do so, the decision having been cast once and for all and having to be justified before the foreign countries. If the responsible leaders actually did not strive for anything but a change of methods, no objections could be made. The position of German foreign policy would have been shaken if the people had shown in the plebiscite that it opposed the measure already taken. It was therefore quite natural to approve of this policy in public within the framework of the solemnly given assurances. Moreover, it could not be overlooked that in a plebiscite on government measures the vote of confidence could not pass over internal politics altogether.

We have to take the date of the speech into consideration. In November 1933 Hitler had made good progress in the field which was in the foreground of necessity and interest, namely in the easing of economic distress and the elimination of unemployment. His measures were on a large scale and at first showed apparent success. Here, too, one cannot measure things by the same standard as one applies to them to-day in full knowledge of their development. At that time the course taken hitherto seemed justified by its success. In his electoral speech which demanded a vote of confidence in the government for the purpose of agreement on a matter of foreign policy, Papen felt obliged to refer appreciatively to this positive development in internal politics.

In his introductory speech Mr. Justice Jackson acknowledged himself in the following words the conditions in 1933 which have been described.

"After the reverses of the last war we saw the German people in 1933 regain its position in commerce, industry, and art. We observed its progress without distrust and without malice."

Of all problems of foreign policy it was perhaps the question of German-French relations which interested Papen most. In his own testimony he has stated his views on this subject and has related how as early as in the twenties he collaborated in various political and or Catholic bodies with the idea of promoting understanding and rapprochement between France and Germany. I refer in this connection to Document 92 and to the meeting between Papen and the French Colonel Picot which is described therein and which is characteristic of Papen's attitude.

In the new government, too, Papen paid special attention to this question as commissioner for the Saar territory. We see how he attempted to avoid also in the Saar question everything that could in any way impair the relations between the countries, even if only temporarily. From this came his suggestion that there should be no recourse to a plebiscite which might give renewed impetus to political chauvinism in both countries. Hitler himself, not only before he took over power but also as responsible chief of the cabinet had stated time and again that Germany had no intention of bringing up the question of Alsace-Lorraine, but that the Saar question was the only problem to be still settled between the two countries. And in so doing he followed the suggestions of Papen entirely which aimed at a peaceful settlement.

Furthermore Papen is accused of having deceived the contracting party, namely the Vatican, when he concluded the concordat in July 1933. By concluding the concordat Papen had intended merely to strengthen Hitler's position and to enhance his reputation abroad.

The hearing of evidence has shown that the concordat in its effects, too, was a bilateral pact and that the legal obligations of the concordat offered certain legal protection to the violated party also during the Treaty violations on the part of Germany which followed soon afterward.

In any case, it is entirely wrong to suppose that Papen had any knowledge of intended future violations of the treaty and that he had brought about its conclusion while he was in possession of such information. If he had wished to enhance Hitler's reputation abroad, this means would have been the least suitable that could be imagined. A struggle against the church without the concordat would have been a matter which, it is true, would have met with an unfavorable reception abroad, but which nevertheless would have been an internal German affair. Through the existence of an interstate treaty these church persecutions became simultaneously a violation of an international treaty with resulting effects of a special nature upon prestige. One cannot conclude a treaty for the purpose of gaining prestige if immediately after its conclusion one proceeds to violate the same treaty. This deliberation alone already refutes the assumption of the Prosecution. Beyond this the accusation of the Prosecution is of symptomatic importance.

Every action of Papen's which has somehow come to light must be interpreted in the sense of the conspiracy theory to Papen's disadvantage, and the simplest recipe for this is to place the later development into the foreground, claiming Papen's cooperation and knowledge in this development, and to designate his previous contrary statements of opinion as ambiguous and double-faced. This recipe is simple if one considers the knowledge of later developments in retrospective as self-evident and if one does not picture the true, factual situation at the time, above all, if one makes no effort to reexamine the logic in the original intention which is claimed and the further developments it had. Only in this manner can one as in this instance achieve a result which on closer consideration presupposes the folly of the person acting at the time.

But quite apart from these deliberations the attitude of the defendant toward religious matters prohibits the slightest doubt in the sincerity of his intentions. In the hearing of the evidence it was set forth that not only his closest personal advisors in church affairs but also the highest dignitaries of the church who were in closest personal as well as professional contact with the defendant in these matters emphasized that his attitude as a Catholic was absolutely free of reproach at all times. The lack of foundation of the whole indictment with regard to church questions is already made clear by the confutation of the assertion of the Prosecution that Papen himself broke the Concordat by dissolving the "Work Association of Catholic Germans" ("Arbeitsgemeinschaft Katholischer Deutscher")—I refer in this respect to the unequivocal testimony of the former secretary of the "Work Association of Catholic Germans," Count Roderich Thun. (Defense exhibit 47.) It must be stated, however, that Papen not only saw with regret the subsequent violations of the Concordat by the Reich but that he actively tried to oppose them. The entire activities of the "Work Association of Catholic Germans" consisted practically of nothing else but the establishment of such violations of the Concordat in order to furnish Papen with a basis for his constant interventions with Hitler. After Papen's departure for Vienna the practical opportunity for such interventions ceased to exist.

From all of Papen's speeches it is evident that his attempt at safeguarding the churches did not emanate from considerations of political expediency of the day but from his fundamental religious attitude. I believe there is no speech in which he did not express himself on this problem emphasizing time and again that only the Christian philosophy of life—and thus the Christian churches—could be the foundation for the orderly government of a state. In just this Christian foundation he saw the best protection against the tendency of the party to give preference to an ever increasing extent to the idea of sheer might over that of right.

With regard to Papen's report to Hitler of 10 July 1935 (*2248-PS*) which was submitted during the cross-examination the Prosecution fell victim to a quite obvious misunderstanding. Papen refers in it to the favorable results there would be in the field of foreign politics if one could succeed in eliminating political Catholicism without touching the Christian foundation of the state. Papen does not state here his opinion on past and present situation but furnishes advice for the future. The contents of this advice are definitely positive in the ecclesiastical sense. They state that one may eliminate political Catholicism but the purely ecclesiastical interests themselves, that is, the christian foundation of the state must remain untouched. These directives destined for future times obviously contain criticism of the past as well. We see here how in connection with activities in the field of foreign policy matters are discussed and brought up to Hitler which in themselves belong to another field.

In his own testimony Papen stated his opinion of the accusation of the prosecution that as a good catholic he should have resigned after the Pope had issued his Encyclical Letter "With Grave Apprehension" of 14 March 1937. Papen could refer in this connection without any criticism and with full approval to the standpoint of the church itself which has always been of the opinion that one should hold a position so long as it still offers the slightest opportunity for positive work. Owing to this wise attitude and to its feeling of responsibility for the German Catholics the Church did not completely break with the Third Reich until the end. One cannot ask an individual Catholic to take any other standpoint. This all the less as Papen in purely foreign political activities came into no conflict whatsoever with his Catholic conscience.

The accusation that in the fall of 1938 he should have protested to Hitler about the treatment of Cardinal Innitzer is also lacking in foundation. Papen himself can no longer remember today when and in what form he heard of these occurrences at all. The German press did not publish anything about it and in no case did such matters reach the public via internal Church channels, as the Prosecution assumes. In any case at that time Papen had no possibility whatsoever to intervene, being merely a private person and besides in bad standing with Hitler for the moment.

I have already dealt with Hitler's development into an autocrat. After the abolishment of joint reports to Hindenburg, Papen's influence was reduced to minimum. Protests in cabinet sessions coming from a single man who was unable to base these protests on requirements of his own department were of purely declaratory nature. Meanwhile the circle of applying Nazistic doctrines in practice was closing more and more. It became clear that the willingness to compromise of the first days in agreeing to a rule by coalition was slowly abandoned and that the National Socialist idea kept gaining ground in all fields. It was clear to Papen, that he could not follow that course. It was likewise clear that he in the framework of his official position could not alter the general trend, despite his efforts to help in individual cases. On the other hand his theoretically still existing position of Vice Chancellor gave him certain weight in public life. Thus he had to face the problem whether he should stand forth with public criticism of prevailing abuses as a last attempt to gainsay influence upon the development by public discussion of the problems. In case of failure, he would have at least achieved the public branding of those abuses by a responsible party, even if as a natural consequence Papen would have to give up his position and would thus no longer be able to aid many people in individual cases.

In his Marburg speech of 17 June 1934 Papen distinctly branded all abuses which had become apparent until that time. Such extensive public criticism remained the only instance in the history of the "Third Reich."

He realized that the danger of Nazism lay in the fact that its different doctrines in practice dovetailed into an encircling inclosure suppressing the entire public life. Had that inclosure been breached at a single spot, the dangerous character of the entire system could not have been maintained. If only one of the points discussed would have met with success when carried out in practice, it would have shown a total change of conditions. The system objected to could not have existed another day if the freedom of public speech, demanded by Papen, would have been granted. It could not have been upheld, if the conception of justice and of equality before the law were recognized. It could not have existed if freedom of religion were granted. A Nazistic racial theory cannot be upheld if the maxim of the individual's equality, common to all confessions, is advocated.

Each of Papen's attacks in his Marburg speech—he had dealt with the racial issue already in his Gleiwitz speech—was in itself an attack upon the development of the entire Nazi doctrine. The audience was clearly shown by a leading member of the opposition in the government where the entirety of the abuses originated from.

The consequences for Papen of such an action were obvious to begin with.

Either Hitler would take into consideration the state of affairs, after it had become a matter of public discussion or Papen was going to offer his resignation, since for further cooperation he could no longer reconcile his viewpoint with the path chosen by Hitler.

Evidently Hitler in his position at that time did not consider it necessary to make a concession to public opinion by deviating from his line of action. He tried to kill the opposition by forbidding the publication of the speech and by penalizing its distributors. Papen resigned, Hitler did not accept his resignation immediately, since he obviously had to take Hindenburg into consideration, wishing to clear up the situation first of all with him. Meanwhile the events of 30 June took place.

What fate had been destined for Papen in the course of those events will probably never be known definitely. Particularly, it will never be elucidated whether different people were moved by different intentions.

The improvisation of the action becomes best apparent in the way it was carried out against the office of the Vice-Chancellor. Bose was the first victim in the very building of the Vice-Chancellory. Jung, who was arrested outside of Berlin, was similarly shot. His fate, though, became known to Papen and the public only much later, as it had been hoped at the beginning that he not only had left Berlin but had gone to Switzerland, having been warned by the measures taken against the Marburg speech. The other members of the staff, which could be apprehended, were taken into custody by the police and later sent to concentration camps. As to Papen himself one evidently hesitated to make a final clear decision on his fate. His close relationship to Hindenburg would seem to indicate the advisability of not burdening the list of victims of 30 June with so prominent a name, after it had been burdened enough in relation to Hindenburg with the crime, against Schleicher, camouflaged though as self-defense.

Anyway, within the framework of the accusation it suffices to establish that whatever Papen's fate has been in the end, the measures taken against him and his people demonstrate his absolute opposition against Hitler and the Nazi policy.

During the cross-examination the Prosecution presented letters to Papen, which outwardly seem to show at first a certain divergence from his usual attitude. In those letters Papen assures

Hitler of his attachment and loyalty and hides his real and material desires under polite phrases which otherwise were in no way customary in his relations with Hitler. It may appear surprising, that a man who opposed the system, who had been persecuted for that reason and upon whose associates such incredible things had been inflicted, chose such a form of letter. But for a fair judgment a correct understanding of the state of affairs at that time is required. A state of lawlessness existed at that time. It offered a favorable opportunity to get rid of troublesome opponents in the course of these measures. The examples of Schleicher, of Klausner, and others have sufficiently shown that. There was no way of knowing beforehand when and in what manner the measures taken against the persons already involved in these matters would end. One believed almost hysterically to see in every man with opposing ideas a conspirator with those SA groups, who sooner or later were really going to revolt against Hitler.

How far indeed persons of the right on the ground of their opposite attitude had joined hands with the SA, a powerful factor at that time has not been established yet with certainty. Anyhow it could not be judged at that time whether or not Hitler's statements in regard to persons not belonging to the SA were correct.

For Papen the situation at that time was as follows: He knew of Bose's assassination, but was as yet unaware of Jung's fate. He hoped that the latter had escaped. Three of his co-workers were in a concentration camp. These had first to be released from there. And also for the future the suspicion had to be dispersed that any one of them as well as Papen himself had been in contact with the SA circles in revolt.

If Papen ever wished to make any representations with Hitler, the first requirement for any possible success would be to put a distance between him and such SA circles. Papen therefore felt obliged to assure Hitler of his loyalty and faith.

Besides Papen has been convinced for years that Himmler and Goebbels were behind the attack on him and the Vice-Chancellory and that Himmler in particular wanted to eliminate him, having been prevented from doing so only by Goering, and that therefore in order to safeguard himself against these two it was necessary to assure Hitler of his correct attitude.

In judging these letters it is not their form, but their contents which is essential. The alpha and omega of the letters are the demand of rehabilitation for his own person and his associates. He demands court action. He advises Hitler to strike out from his intended Justification Law all actions directed against persons outside the SA circle.

But what is the meaning of these demands of Papen? Their real significance is the upholding of what is legal against the illegal actions of 30 June. He demands an objective and legal clarification of all that is to be condemned in the events of 30 June. When we consider these events of 30 June, we must bear in mind that these events fell into two parts. The first were measures against the SA leaders, whose radicalism had always been known and who were always to be connected with acts of violence and independent activities, which in the past had had to be condemned. An intervention against such people could be explained as an act of state defense against dangerous forces which were ever ready for revolt.

The other part consisted of measures against personalities who stay outside the SA circle. A court investigation would have resulted in the clearing up of these events and in the condemning of the responsible persons.

I believe that when in cool criticism one pictures to oneself the events at that time, one can only arrive at the conviction that Papen's situation aims could actually have been no other than that which he had proposed to Hitler a rehabilitation by means of a court action of those persons who had been unjustly persecuted and the elimination of a summary justification of the measures in question by a law. If we come now to the heart of the matter and to what was actually desired, we cannot give to the form of these letters the meaning which is ascribed to them by the Prosecution.

That the form in particular did not represent an approval of the measures of 30 June, but was merely used for the abovementioned purpose is best shown by the examination of the letter of 17 July. Though at that time Papen had achieved the release of his co-workers from the concentration camp, his other demands were not fulfilled by Hitler. So we now see a piece of writing which is entirely lacking even in the most elementary forms of politeness—merely objective statements and objective requests—a piece of writing signed only the name of Papen without even a closing courtesy formula.

As to the affair in question Papen does not retreat from his line for a single moment: He holds fast to his resignation and demands immediate action on it, as the letter of 10 July 1934 shows. He refuses to play any part in future government activities. He leaves Hitler immediately after having had him called out of the Cabinet session on 3 July. He keeps aloof from the Reichstag session, at which the Justification Law has been confirmed. He rudely declines the offer to accept the comfortable post of ambassador at the Vatican. Such his negative attitude.

As to the positive one, he strives to bring about the intervention of the Wehrmacht. He turns to his friend Colonel General von Fritz Blomberg, but owing to his attitude, it is out of the question. Fritsch will not act without a formal order from the Reich President. So now Papen endeavors to get in touch with Hindenburg. But Hindenburg's entourage keep him off.

All accesses to his estate Neudeck are closed by SS guards. Papen sends his secretary Ketteler to Hindenburg's neighbor and old friend Mr. von Oldenburg to obtain entry in that way, but also that attempt fails. He has to witness, how obviously Hindenburg has been influenced, when he publicly approves of Hitler's conduct on 30 June in an official telegram.

So what was Papen to do now, which would promise even moderate success?

In his negotiations with Hitler he tried to keep things on a legal plain. The attempts to mobilize the only factor of power, the Wehrmacht, had failed. Hindenburg cannot be reached; he is evidently influenced by his advisers in the opposite direction.

The Prosecution is of the opinion, that this was just the time when Papen should have openly pointed out the criminal events on 30 June; he could possibly have effected thereby the collapse of the entire Nazi system. That assertion is untenable. Apart from the fact that Papen, as shown, had no longer the opportunity for such an official statement, subsequent developments in Germany demonstrated that such an individual protest would not have had any effect against the powerful position of Hitler either within the country or abroad. Hitler's prestige in Germany was already then so great and more so later on, that such a protest, even if it could have reached the public at all, would surely not have found any echo in the masses of the population. To be sure, the great masses saw only the economic improvement and the strengthening of Germany's position abroad and only a numerically thin layer realized the true danger of the development. Most foreign countries knew about the events on 30 June more than the German people. A statement by Papen to the people would not have thrown much more light on it. No conclusions were drawn from the available information by foreign countries either at that time or later.

The Prosecution is even of the opinion that such a step might have led to the reoccupation of the Rhineland by the French. I am unable to discover where the Prosecution has found a basis for such an assertion. It is contradicted by the fact that no military reaction of any kind followed after the events which occurred later and which do not belong in the realm of internal politics, but vitally touched the world abroad—as for instance the introduction of compulsory military service and the occupation of the Rhineland.

By his resignation and ostensible non-participation in the sessions of the Cabinet and of the Reichstag, Papen showed the public that he was hostile to the development. His conduct was a public protest against the measures of 30 June and against their perpetration. The Prosecution cannot overlook these apparent signs which are historical facts. It attempts therefore to construct an anti-thesis between his conduct and his mental attitude. The only assistance at their disposal to that end are the letters addressed by Papen in July to Hitler. Even if the spirit and purpose of those letters were not clearly discernible from their contents, as in fact is the case, such an attempt would also fail in the face of the facts which were just stated because of the inadequate means at hand.

Generally, I would like to state in this regard the following. On what ground should Papen have taken an inimical attitude toward Hitler during his Vice-Chancellorship and during the events of 30 June, while being in fact a loyal follower of his? On what ground should Hitler have desired it himself who, according to the Prosecution, conspired with Papen—and this, after all, would only be a result of the conspiracy! Could it be in the interests of Hitler that Papen disclosed in his Marburg speech all the weaknesses and misdeeds of the Nazi system? On what ground should Hitler have wished that Papen so obviously distanced himself from the lawless actions on 30 June? It should have been in his interest that his Vice-Chancellor kept also outwardly in line with the Reichs-Chancellor.

If we consider that, only one conclusion can be arrived at: What the Prosecution believes to be able to interpret as the mental attitude of Papen, lacks all logic.

This thesis of an unconditional obedience to Hitler despite certain contrary facts intended to serve as camouflage is used again by the Prosecution with respect to Papen's acceptance of the position in Vienna.

Before discussing this complex let me briefly state the following:

In my opinion, the final development of the Austrian question, which occurred after Papen's recall and undoubtedly without his cooperation, namely the marching in on 12 March 1938, does also not represent a crime in the sense of the Charter. The Charter considers as punishable the preparation and the waging of a war of aggression or of a war in violation of international treaties.

In the three counts of the indictment, it has merely confined itself to the arraignment of what appears as a most serious crime with its terrible further consequences; the aggressive and prohibited war, the crimes against the rules of warfare, and the crimes against humanity in their most violent form, the immeasurable consequences of these grave actions have all justified this unusual trial. The Charter does not charge the Tribunal with the punishment of all the injustice which has occurred during the course of the development of National Socialism. Such a task could not be fulfilled within the framework of this Tribunal for technical reasons and for lack of time. It is not the task of the Tribunal to examine whether international treaties were observed or not. This question is only of importance if wars were caused or if the crimes of violence which are to be described in detail have to be accounted for. The march into Austria is no war however far one stretches the conception from the standpoint of international law. In this case it is a decisive fact that no force was employed and not even the slightest resistance was offered, that on the contrary the troops were received with jubilation. Furthermore, the march into Austria cannot be considered in connection with the later acts of aggression. It was a special case based on the special situation which since 1918 had already found its expression in the efforts both on the Austrian and on the German side to bring about a union (Anschluss) of the hardly prosperous Austrian state with Germany in some kind of constitutional form.

Therefore, the actual events must be detached from Hitler's war plans or purely military plans of preparation—with which I shall deal later—and must be regarded as the solution of a political problem of the country which had become acute and the result of which had always been the desire of both sides, independent of Hitler.

Papen's activity in Vienna is clearly characterized by three episodes; the circumstances of his appointment on 26 July 1934, his letter to Hitler dated 16 July 1936 (*Defense Doc. 71*) after the conclusion of the July agreement, and his recall on 4 February 1938.

The following circumstances lay at the origin of his appointment. A crucial event had occurred. Dollfuss is murdered; not only are the relations between Germany and Austria strained but they have reached an extremely dangerous stage of development. The international situation is menacing. Italy is marching upon the Brenner. An ultimate divergence of Austria toward one of the groups of powers interested is directly to be feared. Thus, there is the threat of a final situation which would definitely render impossible the maintenance of even merely supportable relations between Germany and Austria.

In this difficult situation, Hitler obviously thinks it necessary to dismiss his objections against the personality of Papen and entrust him with the mission in Vienna. Papen was particularly fitted for the initiation of a policy designed to overcome the deadlock resulting from the assassination of Dollfuss. Papen had always spoken in the Cabinet favor of a friendly development of relations in the question concerning Austria. Papen was internationally known as a man for a reasonable policy of mutual understanding.

Papen naturally was extremely hesitating as to the taking over of this post. His experiences in the domestic sector of the last period, his personal attitude to the treatment of himself and of his collaborators on the 30 June, his attitude to the assassination of Dollfuss, with whom he had been on most friendly terms since the time of his previous activity, were opposed to the taking over of the post. This resolution therefore was for Papen a very grave one. The perception, however, that he himself would alone be in the position to fulfill this task within the framework of true pacification must outweigh everything. Could he assume that anybody else had the strong will and also the possibility of assuring the maintenance of the road of appeasement? He could never expect a personality of the Foreign Office and still less a member of the Party to have such a personal independence as he himself enjoyed. From his post as Vice-Chancellor Papen brought his experience. He knew the difficulties to convince Hitler by pertinent arguments in a corresponding form. He alone could hope to carry through his efforts for a peaceful policy, notwithstanding the extremist tendencies of Hitler's advisers. His experiences, on the other hand, had made him very careful. He made his conditions and demanded the establishment of a clear policy based on facts. He demanded the withdrawal of influence over the Austrian Nazi-movement, which must be assured by the dismissal of the man who directly or indirectly had participated in the criminal act: the Landesinspector Habicht. He requested his own subordination to Hitler in order to make possible the maintaining of the conditions which he had proposed, and in order to avoid any alterations in the course of its handling. He compels something seemingly impossible in contact with a head of the State; he has the conditions laid down in writing, under which he takes over his post as Ambassador. They are signed by Hitler. He wishes always to be in the position to force Hitler to keep to his written word.

We have a clear picture of these occurrences by the testimonies, particularly by the statement of the witness von Tschirschky, a man who according to the declarations of the Prosecution is really not suspected to view these things in the defendant's favor.

The Prosecution asserts that Papen, out of sheer opportunism as a faithful follower of Hitler's already known plans of aggression, had eagerly and willingly declared himself prepared to take over the new post.

Notwithstanding this, can this form of appointment, this extreme precaution of the defendant be really in agreement with such an attitude? These secret conferences, this unpublished document, signed by Hitler and in Papen's possession cannot really be considered a pretence in order to deceive, as would be the consequence of the Prosecutions charge. These things were not intended to be publicized and were never made public.

The circumstances at the taking over of the Vienna post could only lead to the conclusion that Papen honestly strove to maintain the established appeasement policy. It likewise is impossible to talk here of opportunism. Papen had declined the position of Ambassador to the Vatican. This position of an Ambassador in Vienna was hardly an enticing post of honor in a formed Reich Chancellor and recent Vice Chancellor.

Papen's own good economic situation excluded all along any material motives. Papen's letter of 16 July 1936 to Hitler (*Def. Doc. 71)* is the report of the success of his two years' efforts to bring about settled peaceful relations between both the countries. The treaty of 11 July 1936 put the seal upon this.

This document, the evidential value of which is without a shadow of doubt, clearly explains the task allotted to Papen and its performance. Papen points out that the aim has been reached for the execution of which he has been called to Vienna on 26 July 1934. He considered his task as accomplished with the conclusion of the Treaty.

No clearer evidence can be produced of the exactness of Papen's statement on his task and its performance than by this letter. Why did they believe they must impute a dubious interpretation to his mission? As an obliging instrument of Hitler's plans of aggression he has undertaken the task to prepare and carry out a forcible annexation of Austria. He has been charged with undermining the Schuschnigg Government and cooperating with Austria's illegal Nazi movement to this effect. All he did with a view to pacifying the mutual relations has been camouflage in order to enable him to carry out his underground plans. And here the trustworthy statement of account is mandatory.

Is this also to be a camouflage, and give a presentation which stands in absolute contradiction to the facts—this letter, found by the Allied troops in the secret records of the Reich Chancellory and now thankfully placed at the disposal of the Defense Counsel by the Prosecution?

The third point that clearly characterizes Papen's activity in Vienna is his recall on 4 February 1938. The numerous recalls and nominations of that day clearly showed a reorganization of the most important military and political posts. The personalities of the recalled military and diplomats clearly show what the sole reason was for the unusual and extensive sudden change at that time. If Hitler then also recalled Papen from his post, without the actual reason for this, entirely unexpectedly and without giving a reason, it is thereby clearly proved that Hitler at the beginning of a radical foreign political course no longer saw in Papen the right man for Vienna.

These three points are suitable to confirm unequivocally and sufficiently the peaceful activity of Papen during the entire duration of his Austrian mission. As the Prosecution, however, also strives here to apply single events against Papen, I shall submit this period also to a short consideration still thus far.

We see Papen in a steady struggle with the illegal movement. The reproach that he had conspired with it is best led ad absurdum by the fact that Papen was selected as the victim of an attack by these same illegal men according to the plans of the illegal movement which have been confirmed by Foreign Minister Schmidt. The documentary evidence from the reports at hand which Papen sent to Hitler also has but one meaning. Here, too, there is a completely clear piece of evidence, since the reports to Hitler which took place regularly in the course of business, actually excluded an intention to deceive the public. It is regrettable that all the reports could not be found in order to give, in their entirety, a clear, complete historical picture of Papen's activity. Only a fraction of the reports are in front of us. But when Papen had transferred abroad at the end of his activity the copies of all his reports, as the evidence has shown, then he could have done this only in order to have a historical justification for his policy of peace. It is proven by it in complete clearness that his policy reproduced in the complete reports must have been a policy which was in contrast to the development which has been brought about by the other side in March 1938.

All witnesses, who have appeared in court and who could make statements about the Austrian conditions, have stated under oath that Papen led a policy of pacification and fought against any meddling of the illegal movement in the political happenings. What can be concluded from the presentation of the Prosecution against that? That Papen had to maintain a certain outside connection to members of the Austrian Nazi movement corresponding to his position as German Ambassador and corresponding to the state treaty concluded with Austria? A connection which was in no way kept secret, which was of an observing nature only, and which was necessary in order to fulfill the obligation to report to Berlin about the actual conditions in Austria. If he had actually worked together with the illegal movement in the way the Prosecution states, this would most certainly have been expressed in his reports to Berlin. He does not fabricate any secret plans with the law breakers, but we see him on the contrary in open negotiations with the Austrian government about the participation of the national opposition in the governmental work, which was agreed on in the July Treaty. And if we finally have before us the deposition of the history of the illegal movement in the report of Rainer (*812–PS*), we see their activity in those years takes place without the slightest cooperation or support from Papen.

What can be concluded against the defendant from the fact that he was interested in the activity of the Austrian Liberty Organization (Freiheitsbund)? If it is set forth that this Liberty Organization represents a non-Nazi, trade union, Austrian organization which was considered to be ready to go with Schuschnigg and to support the Cabinet?

What can be concluded against the defendant from the fact that he also observed the governmental conditions in Austria and reported to Berlin about them? And when the wish is expressed at this occasion that this or that constellation is favorable for the development of friendly relations with Austria?

During the cross-examination the Prosecution has presented reports of foreign agencies which Papen forwarded to Berlin. They believe that Papen has made the content of these reports his own. This supposition must be incorrect. The informational purpose of sending reports of the foreign secret service is clearly at hand. Beyond that the following has to be established here also. Papen especially forwarded to Berlin also those documents which had come into his hands and which contained a criticism of the German conditions. The witness Gisevius and Lahousen have pointed out that Hitler was informed incorrectly or insufficiently by his closest coworkers. The critical reports of foreign countries which Papen had forwarded to Hitler in a direct way could and also should fulfil the aim of drawing Hitler's attention to abuses and to make him abolish them. This is especially often the case concerning statements about the anti-clerical conditions in Germany. The presentation of the reports in the case Tschirschky concerning the activity of the Gestapo which were especially mentioned in the cross-examination are on the same line. The regular reports of Papen to Hitler deal partly also with the conditions in the neighboring states. The checking of the contents of the reports shows that they deal entirely with problems which are in direct connection with the foreign political situation of Austria in the Balkans and which therefore fall into the sphere of tasks of the ambassador accredited in Vienna.

Finally we have to go into the affidavits of Messersmith. He describes events after a period of 10 years, in the case of Papen, seemingly in free memory. Time and later acquired information obviously seem to have clouded the picture of memory so completely that we see, for example, Papen's explanations about his tasks in the Southeastern area reproduced in the two affidavits with contents basically deviating from each other.

My criticism can furthermore be satisfied with the statement that the contents of the affidavits are in contradiction to every rule of experience and logic. A diplomat cannot have revealed the secret aims of his politics to the representative of another state who meets him with emphasized reserve. It is impossible, as Messersmith says in another place, that Papen told not only him, but even publicly, his alleged plan to overthrow Schuschnigg, with whose government Papen himself was accredited. It is an impossibility that such disclosures are supposed to have had no consequences whatsoever, and that they have been put down in an affidavit for the first time in 1945.

The two affidavits can therefore be no basis for the finding of a judgment, besides the fact that their content is disproved by the other evidence, which contained both the intentions and the actions of Papen.

I believe to have sufficiently discussed therewith the period in which Papen exercised his activity as Ambassador extraordinary in Vienna.

Beyond it, the Prosecution has taken into consideration Papen's cooperation in the discussion at Berchtesgaden on 12 February.

The occurrence of the conference of Berchtesgaden was not the beginning stage of a new course, but the result of the development up to that time. Months before, Papen and Schuschnigg in conversations had already regarded a meeting in the near future between the two statesmen as desirable. The July Treaty had naturally left many points of difference undecided. The testimony of the witness Guido Schmidt showed us the situation clearly: an opposition party very powerful in numbers, though officially not allowed but tolerated tacitly because of actual conditions, looked ideologically to a full extent toward its at least ideological leader in Germany. There the leader of this Party was at the same time head of the state. Regarding foreign policy a separation of the parties in both countries was necessary. The inner ideological unity, however, necessarily had to lead to differences again and again. We see, accordingly, in the Austrian government an understandable reserve and a constant concern to prevent a growth of the influence of this movement in administration and government. The treatment of the questions resulting from the July Treaty corresponded in practice also to this state of interests. It was obvious that the Austrian side should make an effort to treat the stipulations of the Treaty in a restrictive way. It was only natural that the wish existed on the German side to exhaust the possibilities of the Treaty to the fullest extent. Therefore, a direct contact with the responsible heads of both countries, who on the German side was at the same time the head of the Party, could only be regarded as a reasonable requirement.

The recall of Papen on 4 February threatened to break up this development. Perhaps with the approach of the more rigorous course which was expected, a meeting of that sort for the purpose of the eradication of existing difficulties would be postponed forever. Certainly, a different result could have been expected later on, in a tenser atmosphere, from the collaboration of a radical successor, than that hoped for by Schuschnigg and Papen.

It is therefore thoroughly understandable that even after his recall, Papen, during his farewell visit to Hitler on 5 February, when they came to speak of affairs, still accepted the mission to bring about the intended Conference and to accompany the Austrian delegation to Berchtesgaden for this purpose.

The Prosecution accuses Papen that already at that time the program of the subsequent talks had been determined. Papen, contrary to this, has testified in his interrogation, that he had only received the mission to arrange the discussion for the purpose of clearing up all points of difference on the basis of the July Treaty. The Prosecution still lacks the proof for its claim to the contrary. From what has happened on 12 February, it cannot in any way be concluded because of the personality of Hitler, what he personally thought at the first mentioning of such a discussion on 5 February, and much less, of which of his plans he informed Papen. The evidence has shown that the points voiced by Hitler on 12 February are identical with those demands which the Austrian National Socialists had raised immediately prior to the discussion and transmitted to Hitler in their own channels. From this it can be seen that the subject of conversation chosen by Hitler in the discussion of 12 February was at the very least substantiated and could not as yet have been on hand on 5 February. If the Austrian Nazis preceded Papen with their demands to Berchtesgaden, then the view of the Prosecution is thereby refuted that Papen had conspired with Hitler and the Austrian party. In this case he himself would probably have been the best liaison man between the wishes of the Party and Hitler. This is also emphasized through the testimony of the witnesses Seyss-Inquart and Rainer, who have stated clearly that they did not have any contact with Papen during this time. Rainer also points out in his report that Papen had been of the opinion that the fact of the prearranged discussions had remained secret before the Austrian party.

The Prosecution has used the claim for the incrimination of Papen, that at the reception of the Austrian delegation on the German-Austrian frontier he had called Schuschnigg's attention to the presence of generals. Whether this really corresponds to the facts was not proven by the presentation of evidence. The sole evidence which can be used in respect to this is the testimony of Schmidt. The letter could no longer exactly testify anymore whether Papen had spoken of one General, namely Keitel, who according to past experiences after taking over his new office constantly kept himself in the surroundings of Hitler, or of several Generals. Papen himself does not know anymore to-day, if and in what form he made such an exclamation to Schuschnigg at the time. He also does not know if at the time he was aware at all of the presence of generals. It is very possible that it came to his knowledge at the overnight stay in Salzburg, where he had stayed at a different hotel from the Austrian delegation. In any case, however, the fact cannot be overlooked, that even if Papen had made the statement claimed by the Prosecution, this statement was made prior to the visit. That, therefore, he did not participate in any attempt at intimidation toward the Austrian gentlemen which might have been aimed at a motive of surprise. His participation in the discussion has been cleared by the evidence. Hitler alone was in command, who, in a brutal manner surprising to those who knew him, tried to impress Schuschnigg. Technical details were negotiated with Ribbentrop. Papen more or less participated as a spectator which also bore the fact into account that he did not occupy his official position anymore. According to the uniform testimonies of those participating, he only saw his task raised by circumstances to intervene soothingly.

One has to consider his position: he sees his intentions doomed to failure through the behavior of Hitler, which cannot be expected of any reasoning human being. He sees how a man who is quick-tempered by nature in his excitement lets all that go which is necessary for a reasonable discussion in the sphere of a conference of statesmen. He hears Hitler's threats, and has to consider him determined to let things go an irreparable way at the abrupt failure of the negotiations. In the framework of this situation, therefore, the achievement of certain concessions—Hitler acquiesced in the field of the Army Ministry and the economic demands—and the postponement achieved after a hard struggle of the final settlement for ratification by the Austrian government and the Federal President (Bundespraesident) was the optimal solution of the dangerous situation. Even though in this point Papen agreed with the Austrian statesmen who undoubtedly were willing while safeguarding only reasonably the interests of their State to affix their provisional signatures on account of the prevailing conditions, this does not justify the charge against Papen that he approved and intended the result from the outset.

Hitler's opinion on Papen's previous activity in Austria and his participation in the Conference at Berchtesgaden is best illustrated by the fact that no further office of any kind was any more assigned to him in Vienna. It is very unlikely that during the decisive developments to come Hitler would have failed to assign tasks to a man who inwardly and effectively attended the Conference at Berchtesgaden. One would not have replaced him by new people from Berlin, and for the still more complicated situation one would not have dispensed with the services of the man who, by reason of his years of service, was most intimately familiar with conditions as a whole. One would certainly have availed oneself of his personal contacts with Austrian statesmen which qualified him, in preference to others, to continue work on Hitler's plans. If the Prosecution's interpretation of Papen's efforts toward understanding during the discussion in Berchtesgaden as deceitful maneuvering were correct, there is little doubt but that Papen would have been permitted to continue working along that line, and after replacing his person one would not have charged people to deal further with those things whose course was much more radical.

Papen's memorandum on his farewell visit to the Prime Minister is revealing. A man who in his own commentary to Berlin passes on Schuschnigg's interpretation—that to some extent he had acted under pressure in Berchtesgaden—under "noteworthy," is little likely to have been an active participant in the coercive negotiations.

The record of evidence proved that thereafter Papen no longer held any public office.

The new Charge d' Affaires, Freiherr von Stein, a pronounced National-Socialist, took charge of the Embassy. He was assisted by Keppler, a close friend of Hitler. Papen, on the other hand, makes his farewell calls, and he takes up residence at Kitzbuehel, a winter-sport resort.

In the meantime things are getting more and more critical. The plebiscite which Schuschnigg announces results in a development which perhaps Hitler even had not intended on that scale. The visit of Seyss-Inquart and Rainer on 9 March to Papen was accidental; there were no deliberations of any kind, and no decisions were taken. For Papen even to express the view—which Rainer confirmed—that, considering the formulation of the questionnaire, no decent Austrian could be expected to say "No," but that he was bound to follow Schuschnigg's password, suffices to indicate the contrast of Papen's position toward the views of the Austrian Nazis and the views which the people from Berlin subsequently brought out.

If, in conclusion, I may still revert to Papen's presence in Berlin on 11 March I must say that even in reviewing things in retrospect I can give no clear explanation for Hitler's desire to know Papen in Berlin. Reasons for it may have been manifold. Should Hitler already at that time have been determined to foresee a solution in that direction as it finally came about—after all, doubts in that respect may exist—the reason might have been that he did not dare leave in Vienna this man who espoused the policy of peace; he might perhaps have assumed that because of the extremity of the position in which they found themselves, Austrian Government officials might perhaps have turned to him and that with Papen's help propositions for a settlement might perhaps have come about.

I would remind you of a similar situation prior to the beginning of the campaign against Poland when Hitler was fearful lest "some swine (filthy fellow) might still come along with a proposal for an understanding in the last minute." On the other hand it is also quite conceivable that it was suitable to have Papen in Berlin in the event of yielding on the part of the Austrian Government, in which case he might not have wanted to be deprived of Papen's advice, because of his familiarity with conditions. In the scope of the necessary consideration of the indictment, it is, however, unnecessary to attempt to actually understand Hitler's inner motives. Decisive to be sure is finally merely that which Papen did during his presence in the Reich Chancellory.

Upon his arrival, he expressed to Hitler the desire that through the postponement of the plebiscite a lessening of tension would have to be brought about. His attitude concerning the further events was documented. Papen through his standpoint concerning the military preparations, respectively to the lifting of the order to march in. The shorthand notes of the telephone conversations which had been carried on by Goering have given us a plastic picture of the events in the Reich Chancellory. In connection with his testimony the result is that essentially he was the driving force and occasionally went even beyond Hitler's intentions. He emphasized that from the beginning he had been consistent in striving for a solution, he now did not need to reflect or be advised in order to come to a decision. Seherr-Thoss's affidavit renders Papen's attitude on the eve of the day in question. In an intimate circle he remarked that he had advised against marching in, that against his advice, Hitler, however, just then "had committed the madness of issuing the order to march in."

Finally we still have a clear picture of Papen's attitude concerning this in his conversation with the witness Guido Schmidt, which took place years later.

Austria's annexation was for a long time then already an historical fact and was considered by most Germans a great political achievement. Papen, on the other hand, criticizes most severely the methods used by Hitler and acknowledges anew the fundamental of legality and faithfulness to treaties which, seen from a broad view, was forsaken here to the detriment of Germany.

I come to the result that—independent of the question of law as to whether the case of Austria is at all capable of discussion within the limitations outlined by the Charter—in completion of the defense of the defendant, contrary evidence has been produced that Papen neither brought about the entry into Austria himself nor prepared for it by a policy directed to this end; that his activity in Austria exclusively served the purpose which he assumed with his commission on 26 July 1934; a policy which served for the restoration of friendly relations between both countries, a legal aim which had not the slightest thing to do with a special or general policy of aggression.

The period following this is not brought under discussion by the Prosecution. The defense, however, must go into even this as evidence in refutation. It is easy to find a proof in established facts from this time that the assertions of the Prosecution from the earlier period must be incorrect.

The Prosecution leaves Papen at the termination of his activity in Vienna and it gives no explanation for the reason to which Papen's current inactivity can be traced back. There is no cause, no event, which could have impelled the alleged conspiration to this conduct.

We now come to the period of the immediate preparations for war and the outbreak of the war.

According to the assumption of the Prosecution, the former conspirator Papen at this time abandoned his previous course, in spite of the possibilities that were doubtless available. The Prosecution ought to have cleared up this transformation in some way, if one is not immediately to regard the interpretation of the actions in the earlier period as inconclusive in the sense of a criminal objective.

Papen retired to the country after the incorporation of Austria, where he remained aloof from public life for over a year until April 1939.

This fact is important if one considers the situation at that time; 4 February 1938 doubtless brought about a more rigorous course in German foreign policy.

In the opinion of the Prosecution Papen must have been a willing tool of Hitler for the first actions in preparation for this policy. Were this applicable, then one would have to regard Papen, in consideration of the result aimed at, as a hundred-percent successful diplomat. This so successful diplomat and conspirator now does not go to some place where he can continue his activity further, where preparations might have to be made in a similar manner, as for example in the Sudetenland. He is not placed in a position, where the great political threads run together, in Paris, London, or Moscow, where on the basis of his international reputation he might indeed appear as undoubtedly the most suitable man to support the Hitlerite policy. This man retires from public life at a time when the whole foreign policy of Hitler, when the Sudeten crisis, the incorporation of Czechoslovakia, and the preparations of the war against Poland created a period of an extremely tense political atmosphere. If at that time Hitler did not take his services into consideration at all, then it is clearly apparent from this alone, that Papen was not a conspirator, not even a follower of Hitler, and not even the instigator of the first success in Hitlerite policy, the incorporation of Austria.

In this sense it is also significant, that Papen is first called upon in a situation in which it was not the object to occupy a country, or to make preparations for intended operations. Pāpen is called upon at a time when the policy of expansion of our Italian ally into Albania caused difficulties and gave reason to fear entanglements with Turkey. And so here is a clear task, that of maintaining the status of peace.

If the Prosecution cannot utilize the activity in Ankara for its own support, then it still does not avoid passing unfavorable judgment on the acceptance of the post by Papen. It is, therefore, also necessary to go into this point in detail.

Papen was also very reluctant to accept this new appointment. Twice already, in more peaceful times, he had refused the appointment out of general considerations, because he no longer wanted to be active in any official position at all. Now he sees reasons to which he can no longer close his eyes. He sees a new task to which he believes it his duty to devote himself.

The entire political situation was extremely strained after March 1939. Even from a secondary flank the spark could easily fall on the powder-barrel. A conflict between Italy and Turkey could in fulfilment of existing treaties bring about a general war. If by his activity he could at least exclude the possibility of war to this extent, Papen must have found personal justification for taking over the mission. He was confronting the problem which confronts all those who have been called upon to cooperate within the framework of a system of which they disapprove. To stand aside, to adopt a completely passive attitude is, of course, the easier way, particularly if no other reasons impel the person in question to accept the post. The more difficult way is to take over a task within the framework of an over-all policy of which one disapproves, which in part of its field offers an aim worthy of achievement. And if this partial field is of such importance that the prevention of a possible war depends on it, then the decision to take over such a mission can only be understandable and worthy of approval. If only the most remote possibility of attaining such a goal exists, then private interests and feelings must step into the background.

If one reviews what Papen really did after taking over this mission to Ankara, if one sees that by his intervention the Italians were moderated from the German side and belligerent complications were avoided, if one considers that later Pāpen was successfully able to prevent the war from being extended to Turkey and the more distant southeastern territories, then in looking back one can only say that his taking over the mission against his personal feelings was the right decision.

If we saw during the presentation of evidence to what an extent Papen made efforts to bring about a peace of renunciation as early as the year 1939, then we must also approve his acceptance of the mission for this reason, independently of the fact of what final success was to crown his efforts, even if one could have only figured on a quite dwindling possibility of reaching the desired goal.

The assumption of such a position would finally also be justified from the moral viewpoint if he had only had as much as one single partial success, as, for example, the saving of 10,000 Jews from being deported to Poland, which has been confirmed by the affidavit of Marchionini.

In this connection I want to discuss a misunderstanding which could arise from the judicial inquiry concerning this affidavit.

In his affidavit, Marchionini points out the lives of the Jews involved were saved by the intervention of Papen. Papen confirmed, upon interrogation, the correctness of the affidavit. This confirmation corresponds also with the facts. This does not mean, however, that the meaning of that action, as it is known to Marchionini to-day, and which he mentions therefore in his affidavit, was already known then. Papen knew, of course, that the deportation to Poland for an unknown purpose and with an unknown goal was something very grave. This also explains his intervention. He knows only to-day, the same as Marchionini certainly only knows to-day in all clarity, that the path of these people was not supposed to lead into deportation labor but directly into the gas chambers.

The activity in Ankara has been fully described by the witnesses Kroll and Baron von Lersner. It clearly shows a unified peace policy, a peace policy which, independently from the momentary military and political situation, even at the highest point of German victories, stressed a peace of renunciation. Papen was according to the statements of Rosen and Kroll deeply affected by the outbreak of the Polish war and condemned it from the first.

How can such an attitude and such an activity be reconciled with the assertions of the Prosecution? Papen is supposed to have brought about the war in a conspiracy with Hitler. The Prosecution believes it can deduce the criminal act from his behavior in the years preceding the war. No proof has been submitted as to what may have turned Papen the conspirator into an advocate of peace. It has rested its accusations on the shaky foundation of deductions and omitted to verify whether the assertions of the Prosecution might in any possible way be in agreement with the whole personality of the defendant. In view of the nature of the indictment, one cannot be content to solve the problem by the assumption of a splitting of his personality and an opportunistic attitude. The indictment includes crimes of monstrous proportions. Such an indictment must also rest on the personality of the culprit. Participation in such a conspiracy is only conceivable in the case of a complete identity with the doctrines discussed in the proceedings and described as "Nazism" to their utmost consequences. A conspirator in the sense of the indictment can only be a man who has given himself up entirely, with the whole of his personality, to that aim. He must be a man in whom even the last moral ties have been abolished. Such a personality cannot be a phenomenon of brief duration; the readiness for such a crime must lie within the person of the culprit.

In contrast to the distorted picture of Papen's character drawn by the Prosecution, his true personality has been shown up during these proceedings in all clarity. We see a man who is rooted by origin and education in tradition and conservative ideas. A man of consciously responsible national feeling, to whom for just these reasons a regard for others is natural.

His personal ties with the neighboring country in the West, his knowledge of the world preclude from the first his seeing things from a one-sided viewpoint, according to his own, national wishes. He knows that life requires understanding and the willingness to understand. He knows that international life is built on sincerity and faith and that one must stand by one's word.

We have before us a man who, on account of his deep religious feeling, which he always makes the basic principle of his actions, must necessarily stand in opposition to the ideological doctrines of National Socialism. We have followed his political career and seen that he held fast through all the periods of his activity to his basic political creed which was built on these elements.

In keeping with this fundamental principle and fully conscious of his responsibilities he did not evade any of the tasks assigned to him. And even if we are witnessing in the end the collapse of his hopes and his endeavors, this cannot be the touchstone for the sincerity of his convictions.

To arraign such a man at all under the indictment of a crime in the sense of the facts established in the Charter can surely only have been possible on the basis of the legal simplifications which an indictment for conspiracy offers to the Prosecution. In the facts of the case against Papen, even this interpretation must fail.

The prosecution has not been able to prove that Papen has at any time involved himself in the alleged conspiracy. Opposed to this is the reality. In the evidence offered in refutation facts are established which make a connection of his person with even the idea of the facts in the indictment impossible.

The final conclusion is clearly given. Franz von Papen is not guilty of the charge brought against him!

2. FINAL PLEA by Franz von Papen

Your Lordship, may it please the Tribunal. When I returned home in 1919, I found a people torn by the political rights of the parties, attempting once more in those unfortunate days of my country, I believed as a responsible German that I should not be permitted to remain inactive.

I saw clearly that a re-birth of my country was possible only on the road of peace and intellectual discussion, a discussion which did not center only around political forms but, however, around the solution of the most burning social problems, which were the prerequisite of an inner state of peace.

Facing the onslaught of rationalistic ideologies, it was necessary—and this was my innermost conviction—that Christianity had to be maintained as the starting point of the rebuilding. From the premise of this inner-discussion, the maintenance of European peace would have to depend, too.

The use of my very best years was dedicated to this question. Anyone who knows the facts knows that I did not push myself to the high office and when like uncounted other Germans, in the emergency of 1933, I decided to cooperate in a prominent position then because I considered it to be my duty and because I believed in the possibility to steer National Socialism into responsible channels, because I hoped that the maintenance of Christian principles would be the best counterweight against ideological and political radicalism and would guarantee a peaceful domestic and foreign development.

That goal, however, has not been reached. The power of evil was stronger than the power of good and drove Germany into catastrophe without any hope of redemption, but should that be reason enough to damn those who kept flying high the banner of faith, opposing the flag of disbelief? And does that entitle Justice Jackson to claim that I was nothing but the hypocritical agent of a disbelieving administration? Or who gives Sir Hartley Shawcross the right to say, with scorn, ridicule, and contempt, "He preferred 'to reign in Hell than serve in Heaven'?" Gentlemen of the Prosecution, that is not your verdict—that is the verdict of another, but I should like to ask, doesn't the question of the defense of spiritual values remain in the center to-day for the rebuilding of a world?

I believe that I can face my responsibility with a clear conscience. Love for country and people is the only factor decisive for all my actions. I have spoken without fear of man whenever I had to speak. I served the Fatherland but not the Nazi regime, when I attempted in spite of most bitter disappointments of my domestic hopes, to save peace at least from diplomatic posts.

When I examine my own conscience, I cannot find any guilt, where the Prosecution has looked for it or claimed it, but show me a man without guilt and without faults, which seen from the historical point of view, this guilt may be found in that tragic 2 December 1932, when I did not attempt to persuade the Reich President to maintain the decision he had made the night before—in spite of the break of the Constitution and in spite of the threat by General von Schleicher that civil war was imminent.

Does the Prosecution really contemplate damning all those who with the most honest intentions were ready to coöperate? Does it claim that the German people in 1933, elected Hitler because it wanted war? Does the Prosecution really wish to claim that the German people in its overwhelming majority made the gigantic spiritual and material sacrifices, including even sacrificing its youth on the battlefields of this war—merely for Hitler's utopian and criminal aims?

This High Tribunal faces the tremendously difficult task, without yet having gained sufficient distance in time from the catastrophe, to recognize the causes and results of historical development in their true context.

Only if the High Tribunal recognizes the historic truth and appreciates it, then the historical mission of this Tribunal will be fulfilled—only then, the German people, in spite of the destruction of its Reich, will find the realization of its errors but also the strength for its future task.

XX. ARTUR SEYSS-INQUART

1. FINAL ARGUMENT by Dr. Gustav Steinbauer, Defense Counsel

Your Lordships! High Military Tribunal!

Nurnberg, the old august imperial city, which has given not only to the German nation but also to the world one of its most deeply significant painters, Albrecht Duerer, an unsurpassed sculptor, Veit Stoss, and the mastersinger, Hans Sachs, has, on her ruins, become the stage for the greatest criminal trials which legal history knows. Nurnberg has seen within her walls not only the pomp of the old emperors, but the rallies of the NSDAP also took place there, year after year, as a part of that propaganda machine which understood how to put into motion millions of people by a gigantic, but also diabolical stage management, with flags and standards, drums and fanfares under the slogan of German equality of rights in order finally, in the extravagance of its aims, to lead a nation which has given humanity so much that is good and beautiful to the verge of ruin.

We have heard the indictment here which tries to prove in a comprehensive way that some men had conspired to conquer the peaceful world by the waging of wars of aggression. It was said that the waging of these wars not only violated the treaties which were supposed to prevent war, but furthermore the rules for a humane conduct of the war, and had also trodden under foot the basic rights of humanity in the most contemptible way. Justice Jackson's passionate opening speech will go down into the history of this world trial like the speech of a Cicero against the conspirator Catilina. We saw for months how mountains of documents and a long chain of witnesses were supposed to confirm the indictment, and, on the other hand, how the defense as keeper and servant of the law was striving to help the Tribunal discover the truth. But in the gallery the representatives from all parts of the world were seated, and only too often the whole world held its breath, when there was a break in the dark fog banks and again and again made a glimpse into the depths of unsuspected crimes possible. But outside, before the gates of the Courthouse, stand the deeply moved German people, among whose former leaders the defendants after all belong. But regardless of how the trials will end, the defense must be given credit for one thing, namely, that with regard to the question of the guilt of the German people, one will never again be able to talk about complicity or collective guilt, perhaps rather about collective disgrace, because they were German men, under whose leadership crimes of the most horrible kind were committed! The curtain now rises once more on the final act of this world tragedy, in order to lend an ear again to the defense, and then to pronounce a sentence which must not only correspond to fundamental legal principles, but also insure that crimes such as the Prosecution describes will forever be avoided.

On 20 November 1945, at the beginning of the trial, the Presiding Judge stated that these trials are of great importance for millions of people in the whole world. For this reason, he said, everybody participating in them has the solemn responsibility of fulfilling his duty without fear and without favor for anybody, and according to the principles of law and justice. This duty was often an almost too heavy burden for the defense counsel! Not because of the extent of the material for the trials, not because of the abundance of legal questions which often were of a completely new kind, but because things were revealed here which are so monstrous and abysmally degraded that a normal brain will not even believe the possibility of such happenings. In so saying I am not thinking of the prepared human skin, of the pieces of soap made out of human fat which were shown to us, I am not thinking of the systematic way in which millions of innocent people were tormented, tortured, slain, hanged, or gassed. No, I am thinking of the many touching individual pictures which have made the deepest impression on me personally and probably also on everyone else.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

Auschwitz alone has devoured 3½ million people, men, women, and children! That is really the most terrible weapon of the indictment, that the spirits of all these innocent victims stand beside the prosecutor, admonishing and demanding revenge. But I do not stand alone, either. The many innocent war victims on the German side, women and children who have fallen victim to the terror attacks which violated international law, in Freiburg, in Cologne, in Dresden, in Hamburg, Berlin, and Vienna, and in almost all other German cities, step to my side. My comrades from the Wehrmacht, who as honest and decent soldiers, have sacrificed their lives for the fatherland by the hundred thousands, young and old, faithful to their oath of allegiance stand by my side!

Personality

But even if they did not exist, if the defendant were all alone before his Judges, then it is even more my sworn duty as lawyer to stand helpfully at his side and to be his shield and defense, and considering the abundance of the indicting material, to call to you, Honorable Judges, "Do not judge in wrath, but rather search, like our Austrian poet Wildgans who was a Judge himself has written in the album of a young Judge, 'It is the flower (Edelweis) which blooms under thorns!' "

Before I now consider the indictment with its individual points, I should like to sketch a short picture of the personality of the defendant. Schiller's words in Wallenstein apply to him too, "Distorted by the hate and favor of the parties, his character portrait wavers in history." The indictment, in the trial brief, calls him a cunning, coldly calculating, political opportunist who had a mission before his eyes. It is more than obvious that he misused his position as Minister in order to deliver Austria to the conspirators by his double-dealing. He has committed atrocities in Poland and in the Netherlands in cold blood, and has trampled upon the rights of small nations to religious and political freedom of thought, unconcerned by constitutional obligations.

George S. Messersmith judges similarly in 1760–PS when he says that Dr. Seyss-Inquart, with whom he himself had little personal contact—the defendant denies ever having met Messersmith—had been completely insincere toward his friend, Chancellor Schuschnigg, according to reliable information he (Messersmith) received. The statement that Schuschnigg and Seyss-Inquart were friendly is moreover incorrect. Messersmith had left Vienna in the spring of 1937. As all witnesses testify, Dr. Schuschnigg had at that time only just become acquainted with Seyss-Inquart. But Messersmith added literally that there is only one thing which may be said in favor of Seyss-Inquart at that time, namely, that he may have believed the German protestations which were made to him, namely, that Austrian independence would be respected.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

His political program was the "Anschluss" idea and, considering his origin, this is also easy to explain. His immediate home is the old mining town of Iglau, a German language enclave in the Slavonic sea. At an early age he learned what a small-scale fight means between two nations facing each other in enmity. He was deeply moved to learn that time's storms last year also swept over his immediate home, and that Iglau which had been German for 800 years, will be so no more! Therefore, in judging the defendant, we should take account of the fact that it was the Germanic Borderlands that have at all times experienced the greatest national distress and felt more strongly and fervently the idea of the great German Fatherland than the nationals of the rest of the Reich lulled into self-sufficiency born of self-confidence. Thus it is no accident that leading men in the Anschluss Movement whose names stand out in my Document Book came from the Sudetenland. Doctor Otto Bauer, the late leader of the Socialists, comes from Reichenberg, and State President Dr. Karl Renner likewise comes from Untertannowitz in Moravia, that is from German Sudetenland.

Inasmuch as I did not meet the defendant again since the fall of 1938 until I met him here again in prison, I have asked one of his collaborators in Holland who also enjoys the respect of the Dutch and who was no National Socialist and as Judge of the High Court, a position he held in former times, can be relied on, for an objective opinion on the personality of Dr. Seyss-Inquart. He writes—

"In his work his clear, keen thinking, and the systematic manner in which he fully applied his many-sided talents in carrying out his duties struck me at once." * * * "It is the great tragedy of his life and work that in the person of Hitler and several persons among those who were his closest co-workers, elements crossed his path which were stronger than he. As an intellectual and a mentally cultivated person he became immediately suspect to the main persons in power in the Party bureaucracy surrounding Hitler (Bormann) and in the SS administration (Himmler) although he wore the golden badge of honor of the Party and occupied a high honorary rank in the SS. He continued to be the young Party member who came from the ranks of the intellectuals and were always regarded with mistrust. For those elements, however, he was too 'soft.' Altogether, however, it was his hope that he might increasingly prevent independent sections in the Reich from trying to work their way into his sphere of action as he himself gradually won the Fuehrer's confidence to an ever greater extent. His relation to the Fuehrer was to become fateful to him, as I already mentioned." * * * "However, I am firmly convinced that in such manner he, as well as a great portion of our people, unwillingly as they were, became a sacrifice, a willing tool of the demoniacal power of Hitler."

This is the opinion of an upright German Judge!

Conspiracy

The Prosecution bases the trial on the concept of conspiracy in an endeavor thus to forge a ring around the defendants which is to combine them all in one common responsibility. My learned colleagues have already spoken of the concept conspiracy and its consequences in this trial. To repeat these statements would be to carry coals to Newcastle. But because this is the leading theme for the trial which has ascribed responsibility for the world-shattering events, above all to my client, I should like to submit to the Court a few additional ideas on that subject.

In going through the records of history, we often run across stories speaking of men who combined for the overthrow of a ruler who was disliked, or a system that was hated, and for them to seize power. All these cases were listed under the superficial, collective term "conspiracies." In the book he published in Paris, entitled "The Technique of the State Plot," Malaparte, an Italian, tried to describe the technical methods applied in conspiracies and revolutions, beginning with the time of Catilina down to

Hitler and Mussolini. Even this survey of technique will be sufficient to show how unjustified it is to dub all these undertakings conspiracies, if it is intended to embrace within this term a definite concept such as known in penal law. In any case it is certainly not possible to simply classify all these things, in popular terminology briefly termed conspiracy, under the caption of conspiracy according to the concept of the Prosecution. When Guy Fawkes and his comrades, at the time of James I, tried to blow up the English Parliament in the so-called "Gunpowder Plot," perhaps this was a real conspiracy. Up to now, the English nation on the fifth of November every year celebrate, with fireworks and bonfires and the burning of a straw dummy, the anniversary of the day which saw the happy prevention of the plot. It would be a mistake, however, simply to term any kind of cooperation for political purposes a conspiracy, because—and it is particularly important to repeat and stress this—thanks to the vagueness of colloquial usage, it became always possible again to use the word "conspiracy" in political fights in order to justify thereby, because of lack of adequate legal grounds, the process of defaming and destroying political opponents.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

For the French Prosecutor I should like to cite from the history of his country, France, of an evidently erroneously termed case of conspiracy. Louis XVI was accused of conspiring against the nation and was found guilty. Citizen Doseze, on 26 December 1792, in the first year of the Republic at the bar of the National Convention, served as his defense counsel. His pleading was probably one of the most moving legal pleadings ever delivered, a discourse in which the defense counsel directed himself at the same time against another foe of criminal justice, a foe for political reasons or because of political passion, namely against a violation of the legal principle nullum crimen et nulla poena sine lege. Undaunted and unafraid he expounded among other things the following: "Where there is no law which can serve as directive and where there is no judge to make the pronouncement, one should refrain from accepting the general will as a foundation. The general will cannot as such speak either about a man or about a fact. But if there is no law according to which one can judge then it is also not possible to render judgment, then one also cannot think of conviction."

We still find to-day this principle of nullum crimen nulla poena sine lege firmly rooted in almost all law books. We find it in the German and in the Austrian penal code, we find it in article 1 of the Dutch penal law and we also find it in French law in article

4 of the "code penal" which states, "Nulle contravention, nul delit, nul crime, ne peuvent etre punis de poines qui m'etaientpas proncacess par la loi avant qu'ils fussent commis."

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

The fact that this principle has not lost any of its significance even to-day while this trial is in process, but on the contrary kept its full meaning, results from that—I want to remind again the French prosecutor—that the French constitution which was submitted to the National Assembly on 19 April 1946 establishes specifically as statute of human rights in article 10, "The law has no retroactive force. No one can be convicted and punished, except according to the law which has been promulgated and publicized before the deed which is to be punished. Every person accused is considered under reservation as innocent unless he is declared guilty. No one can be punished twice for the same deed." What is now human right for the French must necessarily remain human right for the Germans.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

When in the year 1935 the idea of analogy found its way into German penal law, this innovation also found severe criticism in the circle of jurists outside of Germany. The second international congress for comparative jurisprudence held in The Hague in the year 1937 formulated a resolution against the analogy in penal law. In this resolution the congress expresses itself in favor of the principle "nulla poena sine lege." (*See Voeux et Resolutions du Deuxieme Congres International de Droit Compare, La Haye, 4—11 Aout, publie par les soins de M. Elemer Balogh, p. 69.*)

From the above-mentioned statements it follows that it is legally inadmissible to apply principles in this trial which lack a legal basis. Continental law does not know the concept of conspiracy, Austrian law, which could come into question as the national law for my client, does not know this concept either. There are at best very small similarities if we point out that the explosives law of 27 May 1885, Reichsgesetzblatt 134, article 5 already declares the contemplation of the execution of a crime with explosives as punishable. Article 174 Ic of the penal code makes theft a crime if the thief commits thievery as a member of a gang which has banded together for the common commitment of thievery. German law recognizes the responsibility under the penal code for the act of another only as accomplice, instigator, and helper. Conditions in French law are similar, and articles 59, 60, 89, and 265 of the "Code Penal" are pointed out briefly.

That this fact is not clear and at least dubious is also admitted by the respected Russian teacher of International Law, Professor A. N. Trainin, in his book "La responsabilite penale des Hitleriens" (*Publisher: La presse francaise et etrangere, O. Zeluek, Editeur, Paris 1945*). He states in page 13, "The problems of international penal law have unfortunately been studied very little, there is a lack of a theoretical, clear definition of the fundamental concept 'International Crime' and a well-ordered system of this law remains still to be created."

According to the prosecution, the aim or the means of the conspiracy are crimes against the peace, against the rules of war, and against humanity. Professor Jahrreiss has already spoken extensively about the liability for punishment of individuals because of the violation of international peace, and has described and given due recognition to the status of non-German international jurisprudence. But since jurists of the German language have also concerned themselves with this question, I would like to take the liberty of an additional remark.

The well-known Austrian scholar of International Law Alfred von Verdross has established in his book "International law" (*Publishers: Julius Springer, Berlin 1937*), "according to prevailing opinion, subjects of an international legal crime can only be states as well as other legal corporations immediately subject to International Law, but not individual persons * * *."

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

After these short supplementary explanations of the legal basis of the trial, I turn to the prosecution which accuses my client of having participated in the seizure and taking of control in Austria as a conspirator, and to have committed war crimes and crimes against humanity in Poland and in the Netherlands.

Thus the first act takes place in Austria, and the second one in the Netherlands, after a short interlude in Poland.

East of Berchtesgaden is the Obersalzberg at an altitude of 1,000 meters, * * * Adolf Hitler stands at the window thinking and his gaze glides over the meadows and valleys to the snow-covered mountains which shine a purple red in the light of the evening sun. The country which is protected by these mountains is Austria, his homeland. It is a German land, free and independent, and not subject to his will as the Reich, whose absolute Fuehrer he has become. When he wrote his life work in the fortress Landsberg, he wrote right there on the first page of his book, "German Austria must return into the great German fatherland." The shadows of night rise slowly from the depth of the valleys and his thoughts glide over the mountains to the old imperial city on the Danube which he loves and hates at the same time. It is the city of his joyless youth, filled with want and misery. In his book "Mein Kampf" he compares this city with Munich now and says about the latter, "Munich, a German city, what a difference from Vienna, I get sick when I think back to this racial Babylon." And still, this city remains the goal of his longing and he calls this same city in the March days of 1938 a pearl to which he will give the setting which its beauty deserves. And on his table lies a book "The History of German Austria." Hitler read this book again and again, it is the history of his homeland, and we also want to leaf through it a little, as far as time permits it here. We read, "Austria was throughout many centuries one of the strongest pillars of German life. Its evolution, its rise, and its descent form a considerable part of German history. Austria was and is a piece of the German glory and German suffering. Austria has received inestimable strength from the old Reich, but she herself has performed much of greatness and value for the expansion of the entire German culture." [At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

The old Roman Empire of the German Nation was destroyed in 1806 in the clash of the two powers. The Reich died, but the Reich concept lived. At Leipzig in 1813 Prussians and Austrians fought shoulder to shoulder under Schwarzenberg, Scharnhorst, Gneisenau, and Bluecher for the liberation from the yoke of the Corsican tyrant. On 11 January 1849, the deputies of all German states assembled at Frankfurt-on-Main for the constitutional assembly. The Austrian delegate Bergassessor Karl Wagner from Styria spoke at that time the memorable words, "Leave an opening for us so that we can enter; we shall come, unfortunately perhaps not all of us anymore, we, Austria's Germans shall come, how and when, who can tell? Who can read in the book of the future? But we shall come!"

In the year previously in Paul's Church where the delegates of all German lands and states had met, the poet Ludwig Uhland as delegate spoke the memorable words, "May it be that it will always be Austria's job to be a light for the East; it has a closer, higher job; to be the artery in the heart of Germany."

But on the battle fields of Koeniggraetz in 1866 a community of a thousand years between Austria and Germany was destroyed and Austria was forced to leave the German Federation. How unsatisfactory the solution of the German question by Bismarck's forced exclusion of Austria from the union of German states was, was also recognized in the Reich, where Paul le Lagarde wrote in 1875, "But despite this, 1866 and the German Reich is an episode. Nikolsburg cannot separate what has been decided by geography and history to be together, if this being together will not be a union for a long time yet."

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

The common history of almost a thousand years, but above all the common language and origin, the same customs and the same mode of life, demand the closest unity. * * * But is it not a symbol of spiritual unity that just as the North-German poet Hebbel, also Beethoven and Brahms, made Vienna with its sense for art the permanent city of their work? There is no German music without Austria. But Austria did not only make her proud contribution to the cultural life of the German people in the field of art, but also in the fields of science and technology.

[The Tribunal objected to further discourse on the history of Austria. Defense Counsel omitted two pages of his prepared speech.—Ed.]

The massed common will of the two great persons of the Third Reich to take over Austria at the opportune moment is the key to the solution of the Anschluss question. For that one does not require a conspiracy; whoever also participated were figures on the chess board of the two men, supers in the great theater of the world.

But let us return to Austria. * * * I have already pointed out in the presentation of evidence that according to my opinion, three reasons led to the Anschluss, and have also attempted to explain this by the documents submitted to which I refer herewith:

1. The economic want,
2. The disunity of the democratic parties resulting from this, and
3. The attitude of the great powers toward Austria, especially during the critical days of March 1938.

Dr. Karl Renner, the federal president of the Republic of Austria who enjoys the confidence of the four occupying powers and on whom the entire Austrian people look with respect because he has stepped to the helm of the ship of state, for the second time in a period of serious emergency has described the history of the Anschluss very appropriately in a memorandum in 1945. "The political reason why the Anschluss idea got hold of almost all of Austria at the conclusion of the first World War lay in the repeated proclamations of the victorious powers that the war was waged for the 'right of self-determination of the nations'." * * *. "But this political reason was not decisive for the masses. Austria is a mountainous country with much too little arable land, a country of an entirely one-sided economic structure, its capital itself shelters a third of the population, its industry nourishes a large part of the latter only by working for its neighbors, receiving from them raw materials and bread. The sudden separation of the high agrarian parts of the previously uniform tariff territory of the Danube Monarchy, the measures of the successor states in 1918 introducing high protective tariffs deprived the country simultaneously of its food sources and its export territories. The fear not to be able to feed themselves and not to be able to find work at home, the sudden limitation of the labor market were the factors which made in 1918 the "Anschluss" (annexation) appear as the only possible solution. One cannot talk about a national Chauvinism of the Austrian working class, so much the less so, as this class had its origin to a very high percentage in parents of non-German blood and who had hardly lost their ties with the homeland. The overwhelming competition of the Reich German and Czechoslovakian industry loomed menacingly before the workers of all professions in this small country, cut off from the sea and poor in raw materials, which was afraid not to be able to stand up against this competition. To understand first of all this economic situation means to understand the "Anschluss" movement and brings the realization, how Hitler's boastful announcement that he had eliminated unemployment in the world had to make such a deep impression on the Austrian working class, that the desire to prevent the Anschluss was so weak within this working class at the beginning. * * * "

With the decision of 5 September 1931, the Permanent International Court at The Hague declared the customs union between Germany and Austria incompatible with the Geneva protocol of 4 October 1922 by 8 votes against 7. This was the last attempt of the governments to achieve a closer mutual state-legal relationship with the express accord of the victorious powers. It failed. Wasn't the conviction bound to arise in the minds of fanatical "Anschluss" partisans that this paramount national aim could only be achieved through their own initiative?

A year later the deficit of the American Foreign Trade reached 613 million schillings. Dr. Dollfuss concluded on 15 July 1932 a loan agreement in Lausanne under the condition that the "Anschluss" problem would be put off for another 10 years. The ratification took place during the session of the National Council on 30 August 1932 with 82 votes against 80. In the federal council, the Social Democrat Koerner, at present mayor of Vienna, had protested against this law in view of a closer community with Germany.

Hitler came to power during the year after. The Social Democrats saw their party dissolved in the Reich, the trade unions crushed, they saw the Reichstag fire and the starting persecution of the Jews, and their leaders turned away from the "Anschluss" idea. The Catholic circles, who wanted to fortify the Catholic element in the Reich by the "Anschluss" also turned away because of beginning persecution of the clergy in the Reich, and only the National Socialists alone whose membership had increased ten times within a short time were in favor of the "Anschluss." As Dr. Dollfuss had eliminated the parliament and thereby the way to power by means of votes, the National Socialists, under the leadership of land inspector Theo Habicht, aspired with all means to the power in the State. It comes to the bloody events of the year 1934. Dr. Dollfuss is killed by the hands of assassins and his successor Dr. Schuschnigg attempts to restore the order in the deeply shaken state system. The Socialists, however, remain sulkily aloof because of the February events of the year 1934. Under the foreign political aspect the situation changes too. While Italy in the year 1934 still stood on Austria's side and while Missolini had deployed his divisions on the Brenner menacingly against the North, the Ethiopian adventure had forced Italy on Hitler's side. Austria is forced to follow the changed course and concludes also the agreement of 11 July 1936 in order to improve the economic situation. Germany recognizes the independence of Austria in this agreement and ceases the economic war. The price for that, however, is a series of measures which give the National Socialists in Austria a new boost. In order to extend the small platform of his government and in order to bring about a real satisfaction, Chancellor Dr. Schuschnigg declares to invite also the so-called Nationals to cooperate. Among these men is also the defendant, who then becomes Austrian State Councillor in May 1937. The idea of the "Anschluss" constituted his political program as already mentioned above. He never tried to hide this fact. He also comes from the ranks of the National opposition, a factor which must not be overlooked. The "Anschluss" also brought him nearer to National Socialism, and it seems immaterial to engage in long investigations at what time he actually became a formal member of the party. Among the documents confiscated at his arrest, there was in any case also his membership card with the number over 7 million. It is known, however, that in Austria the so-called old fighters were given membership number below 6,500,000. This statement concerning the party membership has also been confirmed by the witnesses Gauleiters Rainer and Uiberreiter. When the new State Councillor then paid his first visit at his assumption of office to the Fuehrer's deputy Hess, the latter is very polite but cool and he regrets that Seyss-Inquart was not an old fighter. The task of Dr. Seyss-Inquart is to supervise the execution of the July agreement and to act as a mediator between the Austrian Government on one hand, the national circles on the other hand, and the Reich. This task has been a thorny and ungratifying one. The patriotic circles, namely, could not forget the terror of the National Socialists during the Dollfuss period. The National Socialists, whose leader was Captain Leopold by that time, were not satisfied with the methods of the national representative Seyss-Inquart with the government. There are constantly differences of opinion between these two men, which go so far that Seyss-Inquart wants to give up his mission to bring about an agreement. I refer in this connection for the sake of brevity to Documents 44 (letter of State Secretary Keppler to General Bodenschatz), 45 (Goering's telegram to Keppler), and 46 (*USA 704*) of my document book. There occur continuous violations of the July agreement and the Austrian Police finds the "coup d'etat" plan, know as Tavs plan, which strives for a change of the government by violence. Minister Guido Zernatto has declared the defendant had remained aloof of all these endeavors. (*Doc. 47 of my document book.*) Then came the conference of 12 February 1938 at the Obersalzberg. The course of this conference is well known. That the defendant discussed things on the evening before this conference not only with Zernatto, the representative and intimate friend of the Chancellor in the government, but also with the national leaders becomes understandable if one considers again and again the, at all times, openly declared role as mediator by the defendant. The latter just had to know also the claims of the opposition, if at the conference of the two statesmen at Berchtesgaden a clarification of the differences of opinion was to be accomplished. The defendant cannot be charged with playing a double game within the framework of a conspiracy because the National Socialist Party tried to exploit the knowledge of the situation to their profit, and that in sending out Muehlmann was quicker than the unsuspecting Chancellor Schuschnigg. There, too, it must be referred to Zernatto who died in exile and who declares that he was under the certain impression that Seyss-Inquart had not yet knowledge of the agreements concluded at the Obersalzberg. On the basis of this agreement Seyss-Inquart was appointed Minister of Interior and Security. He goes in that capacity to Berlin in order to pay a State visit to the chief of State of the German Reich and in order to present to him at that occasion his political program for the relationship of the two States, which is known from the File Notes (*Exhibit 61*) submitted to the Tribunal. The testimony of the defendant as witness of this conference appears completely believable. Hitler had at that time obviously not yet decided to carry out the "Anschluss". It must at this point be referred to the testimony of the defendant Goering, who testified the following on 14 March when examined as a witness; "I was not present in Berchtesgaden, I did also not agree with this agreement because I have always been against every fixation which again extends this state of suspension". Through the agreement of Berchtesgaden the activity and propaganda of the Nazis in Austria had been permitted to a certain extent. The 2,000 party members released from prison on the basis of the amnesty and the members at least a part of whom had returned from the Reich, were especially active in the federal states to an increased extent for a rapid increase of the Party, and used Hitler's Reichstag speech of 20 February particularly as a signal for hostile demonstrations against the State for the purpose of acceeding to governmental power in the shortest time. Not only Schuschnigg but the great mass of the working class now realized the dangerous character of the situation. The menacing peril caused past differences to be forgotten, and negotiations between Schuschnigg and the Socialist labor leaders and the Christian trade unions seemed to provide an insurance for the defeat of the imminent assault of Nazism, by the constitution of a common defensive front of all democratic forces. Prompt action was necessary and Schuschnigg proclaimed his plebiscite. The whole country awoke from its lethargy. Workers and peasants were called up to defend their country and the electoral preparations carried out under the leadership of Zernatto, in the short time available in the factories and in the very remotest mountain valleys. It was clear that this attempt of Chancellor Schuschnigg to swing the helm around and alter the course at the last moment could not fail to elicit the resistance not only of the National Socialists in Austria, but also of those in Germany. Hitler raved and Mussolini had unfortunately only too good a reason in warning Schuschnigg, before the election, with the hint that it would be a bomb which would explode in his own hand.

And now, let us turn back to the defendant. He was not only a government member, he was the trustee of the national opposition and the guarantor for Berchtesgaden before the Reich. If the Prosecution accuses him with having given Schuschnigg his word of honor with reference to the election and not having kept it, that is not correct. Reference is made, I understand, to the speech held by Gauleiter Rainer on 11 March 1942 before the Carinthian party members. On page 12 of this Document, 4005-PS, it is disclosed that Zernatto's lady secretary was a secret member of the NSDAP and betrayed the plebiscite plans to her co-members as soon as she learned them. Rainer says we already knew the whole plan at 11:30 p.m. that same evening! The protest formulated by Seyss-Inquart in the name of the Nationals to the Chancellor against the plebiscite was indeed entirely justified juridically. Beside the fact that there could be no security at such short notice for a proper vote, the vote itself was not constitutionally legitimate. Article 65 of the Austrian constitution of 1 May 1934 specifies exactly under what circumstances the nation can be called upon to vote. Dr. Schuschnigg, therefore, supports his proclamation of the election upon Article 93 of the constitution, which Article merely says generally; "the Federal Chancellor sets down the directives of policy." The execution of the election was incumbent upon the National Front, i.e.. the political organizations. The subsequent developments are well-known, particularly the events of 11 March 1938. In this respect the main charge, that of conspiracy, is, I take it, that Seyss-Inquart has induced the entry of the German troops by his telegram about alleged unrest. We come across this historical lie, which has brought the defendant the name of "Judas of Austria", in most relations of the "Anschluss." We find it, for instance, in Raphael Lemkin's "Axis Rule in occupied Europe" (p. 109). We find it again especially in the opening speech of the American Chief Prosecutor Jackson, although it is incontestably proved by the submittal of Goering's telephone conversations, 2949–PS, in relation with Goering's testimony that this telegram was never sent and was dictated, what is more, to a third party at a time when the German troops had already received the order to cross the frontier. Consequently, these telephone conversations by Goering represent a historical document of the greatest importance.

Rainer's Carinthian speech and his testimony as witness before the Tribunal also contradict the Prosecution as regards Seyss-Inquart's contribution to the seizure of power! According to this Document, 4005–PS, it was Globotcnik who made an abusive use of the Federal Chancellory's telephone to alarm the Federal States. Appointed Federal Chancellor by virtue of Schuschnigg's withdrawal under duress, the defendant discusses the constitution of the cabinet, invites the ministers to assume their functions and takes the retiring government chief home in his own car.

When it is further learned from the testimony of witnesses

Stuckart and Glaise-Horstenau under what circumstances the law of annexation came into being, then it can indeed be said that Zernatto was right when he wrote that Austria was conquered, in his opinion, even against Seyss-Inquart and his government! (*Exhibit 63*). Whoever, therefore, dispassionately surveys the whole set of events of March 1938 relatively to the "Anchluss" and examines particularly the part played by the defendant can only come to the conclusion that one cannot really speak of a carefully elaborated "Conspiracy", of the minutely concentrated perpetration of a crime. Where Austria is concerned, however, the Englishman Geyde is right when he says the curtain fell on the "Tragedy of Austria" with the invasion by the troops. It was to rise again soon on a new play; "The Martyrdom of Austria".

On 15 March 1938, Adolf Hitler came to Vienna. We have seen in this Court room the film record of his reception. With emotion, the defendant addressed him as follows, "What centuries of German History have striven for, for what untold millions of the best Germans have bled and died, the ultimate aim of ardent struggles, the ultimate solace of bitter hours has materialized today. The 'Ostmark' is back with the homeland! The Reich has resuscitated, the German racial Empire (Volksdeutsche Reich) is established." With this Seyss-Inquart had defined the political aim which was, and remained, the guiding star of his actions.

With the Fuehrer came Joseph Goebbels, who switched his gigantic propaganda machine into full swing. Rallies were held in close succession. Festivals were celebrated. There was not a house in the whole country which was not beflagged. The leader of the socialist workers said "I vote yes" and the Bishops made exhortations for the accomplishment of a national duty, "Render unto God what belongs to God and unto the Emperor what belongs to the Emperor!" Both were to be mistaken. For with Goebbels came Himmler and his Gestapo and SS. Already, on the night of the 12 March, began a large arrest operation in Vienna. It included the members of the former military associations as well as prominent leaders of the socialist syndicates, Jews who were active in political or public life, communists and monarchists, priests and Freemasons and even the leaders of the Boy Scouts and of the Austrian Youth organizations. In Vienna alone, 76,000 arrests were made. On 2 April 1938, the first Dachau convoy already set out from the West Station with 165 leading officials including the present Federal Chancellor Figl, Education Minister Hurde, and Minister of Justice Dr. Geroe. The second convoy followed on 21 May, the third at the end of May, and so it went on. Punctually every 8 days, convoys went off to Dachau, Buchenwald, and Sachsenhausen. On 10 May 1946, the National Tribunal in Vienna sentenced to death Anton Brunner who caused 49,000 people, mostly Jews, to be sent to the extermination camps in Theresienstadt, Auschwitz, Minsk, and Riga.

And what of the defendant? He was given the cold shoulder and relegated in a corner. The victor of the Saar electoral contest, Joseph Buerckel, was instated as Reich Commissioner for the Reunion of Austria with the Reich and armed with dictatorial power. The powers of the defendant scarcely exceeded those of a higher president (Oberpraesident) in the Reich, i.e., those of an administrative authority of the intermediary level. Indeed, immediately above him was Buerckel who, under the pretext of the annexation, interfered with everything and laid claim to everything, particularly as regards matters concerning the Churches and Youth, as is evidenced by Documents 67, 70, and 91. The defendant himself opposed Buerckel's methods. Indeed, he raised objections to Hitler himself against Buerckel's action in Graz on 8 April 1938. This we know also from the testimony of Neubacher, Schirach, and Stricker and from the documents submitted by the defense. But Buerckel, whom Churchill described as the "Governor of Vienna" in his book "Step by Step", remained the stronger and the embarrassing censor, Seyss-Inquart, was moved away to South Poland as a Provincial Commissioner. This treatment at the hands of his alleged fellow conspirators shows only too clearly that Seyss-Inquart was actuated by his enthusiasm for the "Anschluss" and cannot have been a conspirator! He was not a leader, he was led or, what in my opinion is more accurate, perversely led. He was even perhaps a docile tool in the hands of the big two, Hitler and Goering, but it was solely for his political ideal, the "Anschluss", without any intention of a war of aggression.

Of course, there was something of an economic crisis in Austria after the "Anschluss". It was partly a repercussion of the rearmament. But what took place was not the "Anschluss" as the "Anschluss" enthusiasts in Austria had visualized it, especially as the war provided a motive and a pretext to level down and repress every dissenting or critical opinion to the most ruthless extent.

Austria did not cease to hope for her liberation and to fight for it. There was much distress and many died. Six thousand were executed in Austria. In the Vienna judicial district alone, 1,200 men died by the guillotine, 800 of them just for their anti-Nazi opinion! In the last days of the war, Vienna's most beautiful edifices fell in ruins and St. Stephan's Cathedral, one of the most august monuments of German Gothic, went up in flames.

So the promise that Hitler had made on 15 March 1938 was fulfilled. "The pearl has the setting, which her beauty deserves." The idea of union, that is to say the wish to bring about the national unification of a nation, was not a crime, criminal however was the introduction of a system that has presumably blocked its realization forever. The defendant certainly did not wish this.

To conclude my statements regarding the Austrian question I shall now briefly proceed, from the point of view of the defendant Seyss-Inquart, to examine the question as to what there is to say against my client from the legal respect. For the clarification of his legal responsibility I will resume his behavior in the following short review; first in his political activity.

1. After the agreement of 11 July 1936, the Federal Chancellor Dr. Schuschnigg took the defendant Seyss-Inquart as a representative of the national opposition as collaborator, thus not as a political follower, as for example the witness Guido Schmidt.

2. Seyss-Inquart has always declared—for the first time to Dr. Dollfuss in July 1934—that the national opposition consisted only of National Socialists who obey solely Hitler's will, in any case will never act against Hitler's will.

3. Seyss-Inquart declared he was a National Socialist; he thus always represented the interests of the Austrian National Socialists. This is not confirmed alone by the witness Skubl but referred to by the authorities previously quoted by me.

4. To avoid any military or international conflict Seyss-Inquart pursued the following aim: Participation, for the Austrian National Socialists independently of the Reich (NS) Party, with closest collaboration between Austria and Germany.

5. Seyss-Inquart declared that this aim could only be attained if Hitler agreed to and directed the Austrian National Socialists expressly towards this policy.

6. The culminating point was Seyss-Inquart's efforts during his interview with Hitler on 17 February 1938. Although, so to say, Minister by the grace of Hitler, he represented his Austrian program. Herein lies Seyss-Inquart's mistake. He thought Hitler and Berlin would establish a policy, i.e., as Bismark said, exploit the art of possibility. Berlin, however, did not wish to establish a policy. In the face of this fact Seyss-Inquart's policy fell to pieces on 11 March. Is this mistake punishable as, moreover, the Austrian State leaders desired an agreement on the same lines and Dr. Schuschnigg, knowing his program, kept him employed? In view of the defendant's basic attitude until March 1938, details of his political tactical attitude are of secondary importance. And

now to the activity of the defendant as Minister of the Interior and as Security Minister.

7. There is no trace to be found of any National Socialist influence on the Austrian executive. The witness Skubl confirmed this with unsurpassed clearness. Seyss-Inquart forbade the police to take any political position (*Doc. 51*) ; he forbade National Socialist demonstrations (*Doc. 59*) ; he avoided such occasions (*Doc. 59*) ; he demanded legality of the Austrian Nazis (*Doc. 52*).

8. On 11 March 1938 Seyss-Inquart fulfilled his duties as liaison officer in virtue of the Berchtesgaden agreement. With Glaise-Horstenau he gave Dr. Schuschnigg in the forenoon of 11 March a quite candid statement of the facts. He pointed out particularly threatening National Socialist demonstrations and the possibility of a German invasion. In the afternoon he delivered Goering's demands to Schuschnigg and the latter's answers to Goering.

9. After Dr. Schuschnigg's offer to resign, Seyss-Inquart retired. He complied in no way with Goering's demand to obtain the transfer of the Federal Chancellorship or to seize power. The ultimatums, with the threats of invasion by the Reich, were, as is known, transmitted by Embassy Counsellor v. Stein and General v. Muff to whose pressure President Miklas finally yielded. This appears from President Miklas' statements 3697–PS and from the witnesses Rainer and Schmidt.

10. Only after Dr. Schuschnigg's farewell speech did Seyss-Inquart publicly demand the maintenance of order. He does not designate himself as a Provisional Government, but, in good faith, as Minister of the Interior and of Security, as was confirmed by witness Schmidt. He took the order not to make any resistance to the German troops from Dr. Schuschnigg's farewell speech.

11. Seyss-Inquart tried as long as possible to preserve Austria's independence and that by telephone conversations with Goering (*Doc. 58*)—for the reasons that he requested Guido Schmidt to join his Ministry as Foreign Minister, as confirmed by witness Schmidt; according to the statements of witness Skubl; by refusing the demanded telegram (*Doc. 58*) ; by the request to Hitler not to invade, as confirmed by Goering; by the request to Hitler also to let Austrian troops march into the Reich.

12. On 13 March 1938 the Anschluss Law was proclaimed in conformity with Article III of the Austrian Constitution of 1 May 1934. The psychological situation of Seyss-Inquart was the same as that of all Austrians who, on April 10th, had by secret ballots voted "Yes" for the Anschluss by 4,381,070 votes against

some 15,000 "No". Among other things Seyss-Inquart is reproached that—

Firstly, he has used his various posts and his personal influence to promote the seizure, incorporation, and control of Austria by Nazi conspirators.

Secondly, that as an integral part of his evil intentions, within the meaning of the prosecution, he has taken part in the political plans and preparations of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances.

To 1. Concerning the first named accusation, I refer to above summary and can limit myself to the following short statements. As a political aim, the annexation of Austria to the German Reich is nowhere punishable, and the defendant had no other aim. The Prosecution oversteps here—as also on other points—the limits of the Charter.

To 2. Concerning the second accusation that co-defendant Seyss-Inquart has participated in a conspiracy against peace, this is to be gauged by paragraph 6, part 2a of the Charter. It is said there, among other things, that planning in common, preparation or execution of war of aggression, or war by the violation of international treaties is punishable as a breach of peace.

I leave to the examination of the Tribunal if the case of the invasion of Austria really comes under the application of this provision in spite of the fact that there was no war. Much can be said in favor of the fact that the outbreak of war is the proviso for culpability for breach of the peace within meaning of the said provision.

In any case I cannot reconcile myself to an interpretation of this provision which goes so unreasonably far as even to consider an abandoned war plan or the possible planning of an eventually bloodless war as punishable as an accomplished crime.

It must be stressed upon with the greatest vigor that no proof has been produced therefor that my client has ever imagined that a war might arise between Austria and any other Power because of the "Anschluss" or as a result thereof. On the contrary, his decision to occupy himself actively with politics after the drama of 25 July 1934 was dictated by the effort not to let the "Anschluss" question be the cause of international complications. On that point he must have been far from imagining that Hitler and his entourage had viewed such a consequence as possible. The consequences of the Austrian enterprise proved him right. The German troops were greeted on their march into Austria with flowers and cheers.

Concerning the Great Powers, France and England protested on 12 March 1938 against the "Anschluss." But this was only a very mild and platonic protest. A military support of Schuschnigg did not result; in the first place the League of Nations, which was the guarantor of Austria's independence, was not invoked.

On 14 March 1938 the British Government declared in Parliament that it had discussed the new situation with its friends of the Geneva Entente and that the unanimous opinion had been that a debate in Geneva would lead to no satisfactory result.

When the League of Nations was inforced of the "Anschluss" by the German Foreign Office it took note thereof without protest, and the Austrian representative at the League of Nations, Pfluegl, received his passport. The Hague Arbitrative Court has struck its Austrian member, Professor Verdross of Vienna, from its register of judges. The diplomatic agencies were withdrawn or transformed into Consulates in the German Reich.

Only a very short time elapsed and already a few months after the occupation and annexation of this small country a State treaty concerning a second small State was concluded in Munich on 29 September 1938 with the alleged aggressor.

The French Prosecutor de Menthon recalled in his indictment speech the memory of the great politician and statesman Politis. I also wish to call him to mind. Shortly before his untimely death he wrote in his book "La morale internationale" (International Ethics) (Editions de la Baconniere, Neuchatel, Switzerland 1943) the following: "Qui menace les petites nations menace l'humanite toute entiere!" (He who threatens the small nations threatens the whole of humanity.)

The Powers of the League of Nations did not feel compelled to pay any attention to this sentence.

But there is another principle of international order which they did not see fit to apply against the annexation of Austria. I mean thereby that principle which, under the name of the Stimson doctrine, has penetrated into the science of international law and diplomatic language. It is the principle according to which the nations of the world refuse to recognize forcibly obtained territorial acquisitions. This principle has at least penetrated into the legal consciousness of present times as deeply as the prohibition of wars of aggression, which is one of the main pillars upon which the Nurnberg trials rest.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

And finally I recall to the memory of the Court the declaration of the Council of the League of Nations of 16 February 1932 in which the Stimson doctrine, devoted into a principle, found the following expression "No trespassing into the territorial integrity and no infringement of the political independence of a member of the League of Nations committed against Article 10 of the Charter of the League of Nations could be recognized as legally valid by the member nations."

Nevertheless all the nations of the world have recognized the incorporation of Austria into Germany without feeling compelled to concern themselves with the Stimson doctrine.

At the same time something essential can be said against the indictment for breach of the peace in violation of treaties. Germany is supposed to have violated three treaties. First the German-Austrian agreement of 11 July 1932, secondly Article 88 of the Treaty of Saint-German, lastly Article 80 of the Treaty of Versailles. Here also it must be pointed out that all the nations concerned have not only put up with the violations of treaties, but moreover sanctioned them tacitly by their attitude. Herein lies at least a renunciation of international law, and the Powers concerned have thereby deprived themselves of any right to an ulterior reaction because of treaty violations, which would be in contradiction to any fairness.

In regard particularly to Article 88 of the Treaty of Saint-German, a violation of this provision cannot, to begin with, be charged against the German Government and therefore against Seyss-Inquart as alleged co-conspirator, because Germany was not bound by this contract which she had not signed and which for her represented a "res inter alios acta."

On the other hand the German-Austrian Treaty of 11 July 1936 was a "res inter alios acta" for any other Power than Germany and Austria; here Austria alone could have raised the objection of breach of treaty. In this connection attention is called to the fact that the reconstituted Austria is not among the signatories of the London Agreement of 8 August 1945. Therefore the four founder States of the International Military Tribunal are not justified in vindicating Austrian interest at those trials.

In regard to Article 80 of the Treaty of Versailles, I resist the temptation to discuss the question of the legal validity of this provision, in particular I will not raise the point of what significance the contradiction of this Article with the so-called 14 points of President Wilson may have from a legal point of view.

But at the conclusion of this my legal explanatory statement of the Austrian affair I cannot suppress a thought of general import. One of the great principles of international order which, in the course of the 19th and 20th centuries, fought itself through amidst much trouble, much confusion, and many makeshifts and realized its aims more and more is the right of self-determination of nations. This basic principle of the right of self-determination of nations has anchored itself into the legal conceptions of international relations of our century to such a great extent that one is forcibly led to include it among the general principles of international law, a thought that particularly appeals to democratic ways of thinking. But as a general principle of international law it would then become the standard criterion of judgment, besides the Charter, the customary international law and thirdly the treaty rights, for the Nurnberg International Military Tribunal, which at any rate must find a similar basis for other questions. And further it would become, like all other generally accepted principles of law, of imperative character and have precedence in particular over international treaty laws.

A number of States have to thank this lofty expression of democratic thought for their existence. Such grace has been denied the Austrians after the First World War. Despite the fact that the people in Austria as well as in Germany unanimously strove for union, Austria was forced to eke out an existence as an artificial unnatural State structure, able neither to live nor to die. How bitter sound the words of the Encyclical "Ubi arcano" of 23 December 1922, "We hoped for peace, but it did not bring salvation; we hoped for healing, but terror came; we hoped for the hour of recovery, but only confusion came; we hoped for light, but only darkness came."

In the year 1938 also Austria and Germany strove for union, following in this the wish of the overwhelming majority of their citizens, and this time success came. From the point of view of world history, the incorporation of Austria has no other significance than the successful integration of a mighty principle of international order, of the right of "self-determination of nations". This dynamism carried away artificial and unnatural treaty stipulations.

Who can speak here of guilt? I have nothing to state on the question of Czechoslovakia and on the question of Poland, very little. For during his short stay he was not in evidence at all to the Poles, but was mainly concerned with the organizational problems of the building up of the German administrative apparatus. In this matter it is sufficient for me to refer to the results of the handling of evidence. Nor will I say anything more about his honorary rank in the SS than that an honorary rank never stood under Himmler's commanding and disciplinary power, nor itself possessed such power in the SS. As regards his position as minister without portfolio, the importance of this function within the scope of the organizations will be discussed in the chapter "Reich Government". Therefore, without going more deeply into this interlude, I hasten to the second scene of this legal matter—the Netherlands.

The Netherlands

Many know her only as the country of windmills, wooden shoes, and wide breeches, with her red brick buildings, her large herds of cattle in green meadows, and her immense varicolored tulipfields. I know her as the country that gave to mankind a Rembrandt, the numerous masters of the Dutch School, and de Grotius the great teacher of international law, that struggled for her liberty in gory fights against Philip II of Spain and produced the great naval hero de Ruyter who won one of the most famous naval battles in history on 21 August 1673. However, in this trial here we learned that of all the occupied countries, The Netherlands offered the most united and toughest political as well as increasingly effective active resistance; we also learned that throughout these years these people never abandoned the hope that the moment of liberty would surely return some day.

The motto of the province of Zealand, "Luctor et emergo" (I struggle and do not go under) had become the rallying word of the whole country!

Seyss-Inquart came to this country in May 1940 as Supreme Chief of the civil administration. Whatever he may have thought and planned, it is his tragedy that he came as the representative of Adolf Hitler and of a system hated the world over. Hundreds of laws, orders, and decrees repeatedly bore his signature and though they may have been ever so fully correct legally, in the eyes of the people they still remained measures of the enemy and Seyss-Inquart their oppressor. My client did not force himself into this office. He had rather requested permission to go to the front as a soldier. Adolph Hitler refused this. Seyss-Inquart also never contested his responsibility and gave himself up voluntarily after the collapse. In case the legal opinion of the defense concerning the superior command is not shared by the court, even in regard to paragraph 8 of the Charter, the total organization of the Reich on the one hand and the attitude of the Dutch people on the other must be taken into consideration in passing judgment on his administrative activity. The way in which Seyss-Inquart on principle came to terms with himself on his conflicting tasks, namely, to represent the interests of the Reich on the one hand and yet to take care of the population within the meaning of the Hague Convention on the other is revealed by his attitude in this respect as follows:

In the administration of Holland my client clearly allowed himself to be guided by the following legal conceptions. The development of war technique particularly in air warfare, the extraordinary extension of economic war, the expansion of the war into "total" and "indivisible war", the genesis of the conception of total blockade, partly made international law, as it was in effect in the year 1899 and 1907 at the genesis of the Hague Convention, meaningless from the viewpoint of the clausula rebus sic stantibus, and partly because of new necessities and given conditions it proved to be absolutely incomplete and useless. Only a few remnants from olden times were still valid in the Second World War.

The severity of this change is revealed particularly in respect to bombings of residential quarters made possible by the colossal development of explosives and the technique of flying and which found no justification whatever according to previous law. If they can be justified at all, it is possible only out of a concept of total war.

However, this development particularly drew the individual person into the war as an object, last but not least, under the influence of the Anglo-American concept of war. Accordingly, enemy civilian population as well as the resources of the occupied regions during this development have become the war potential of the occupying force within the limits imposed by humanity.

A further limit is constituted by the general provision of international law that requisitioning these forces must be necessary for the purposes of war and thirdly this requisitioning must ex aequo et bono be reasonable.

Moreover, the totalitarian and indivisible nature of modern warfare forbids treatment of individual areas separately. It will no longer do to requisition the personal and economic forces of a definite area only for its necessities, as it is still prescribed by the Hague Convention for Land Warfare. Henceforth these forces must be at the disposal of the whole sphere of action of a belligerent country as one unit, on the other hand they benefit from belonging to the whole.

Modern technical development, especially in the field of communications and traffic, moreover causes the attitude towards another problem of warfare, namely the so-called Partisans to be faced by new and most grave tasks.

In contrast to the period of the First World War, the Partisan organization definitely assumed inconceivable proportions in the Second World War and developed into an enormous danger for the fighting troops which at most can be compared with the Guerrilla war of attrition against Napoleon I in Spain. The old international law by no means made sufficient provisions to parry this danger. As a matter of fact the prevailing principle when fighting the Partisans must be the security of the fighting troops at any price.

This means for the army as well as for the occupation administration both the right and the duty to take the severest suppressive and preventive measures within the limits of reasonable expectation and humanity. My client discharged the duties of his office in accordance with these guiding principles with the fixed notion that he was thereby complying with his duty according to the directives of the legal subject of international law, i.e., of the supreme Reich leadership. Any thought of acting illegally or even of committing punishable acts was far from his mind. That has nothing to do with the applicability in this case of the principle that ignorance of the law excuses no one for here no national penal law is concerned but international law and it is not a question on the other hand of a legal error but of a subjective conception of duty, which may have gone astray here and there, but was always credulous!

Now in investigating in detail the individual administrative acts of the defendant in accordance with this basic exposition, it must be pointed out that the National Socialist administration, as everywhere in occupied territories but particularly in Germany proper, revealed an ever greater and more penetrating superorganization and at the same time an extremely tight centralization in Berlin. Consequently there were the following authorities in the Netherlands:

1. The Reich Commissariat (Civil Administration and Protection of Reich Interests)
2. The Supreme Commander of the Wehrmacht and the various Commanders-in-Chief including their own Courts
3. The Police, concerning which I shall speak later
4. Four Year Plan, Goering
5. Special Purpose Staff, Rosenberg
6. General Labor Commitment, Sauckel
7. Armament Ministry, Speer, and
8. Last but not least, the NSDAP with its offices and organizations.

Pursuant to the Fuehrer order, thus de jure, the Reich Commissioner was bound to obey absolutely the instructions of these central agencies, and he was not permitted to intervene in their measures. The record of history to be written will perhaps throw light on the question as to how great was the skill of the defendant to prevent some of them or at least how he toned them down.

As regards the Dutch population, its attitude, as already mentioned, was completely hostile and the forces of the resistance movement, organized, equipped and directed through the Dutch Government in London, grew from one year to another. The defendant's actions should be considered against this background to reach a fair judgment.

I am now turning to the indictment and in outline I shall follow the schedule of the French prosecutor.

Sovereignty

The first charge is the alleged violation of sovereignty of the country through introduction of the Reich commissariat with its four general commissariats; annulment of civic liberties; introduction of the leadership principle; and dissolution of legislative bodies and political parties. These measures cannot constitute a breach of international law. Inasmuch as Germany, which is likewise one of the signatory powers of the IVth Hague convention of 1907, based itself on the laws governing land warfare, and notwithstanding the lack of the all-embracing participation clause after entry into the war by the Soviet Union, the validity of the laws governing land warfare, with due consideration for restrictions referred to in the beginning of the above statements; must be accepted for the Netherlands as well. Its fundamental elements do not seem broken. As a result of the complete occupation of the country, the flight of the Queen and of the Ministers from the country, the highest governing power in civil affairs passed from the Crown and the Parliament to the occupying power, and with it to the Reich Commissioner. Through the unconditional capitulation of 10 May 1940, General Winkelmann, vested with special powers and left behind in the country, renounced his authority in every respect. Furthermore, it is the accepted rule for the occupying power to regulate the administration as it is demanded by its requirements, under exclusion of the right to take any step apt to deprive the country in advance of the final clarification of its fate. A specific recognition to that effect through the Highest Court of Holland took place according to the decision of 12 January 1942 submitted to me. The division of authority between the Reich Commissioner and the Commander of the Wehrmacht, as provided by the Fuehrer decree, is a matter pertaining to the internal segregation of jurisdiction applying to the occupying power. This has been specifically recognized by the British Manual of Military law (CH XIV Amendment 12 of 1936). The fact that the State Parliament was suspended, the activity of the State Council restricted to preparation of opinions in disputes on administrative matters, and that, finally, parliamentary parties were dissolved is likewise no violation of international law because during the period of occupation the occupying power itself decides how far the need for legislative measures and for amendment of the legislation of the country exists. As a rule, about 50 parties entered the contest for the 150 seats in the Dutch Parliament at every election. Due to the fact that the contesting parties not only were in accord in their antagonism toward the occupying power, but frequently were active in the various resistance movements, their suspension, and subsequent dissolution—which was only decreed on 5 July 1941—was the good right of the occupying power, all the more so as the country was on the direct path which the coming developments of the war were bound to follow and since an invasion was very likely. This made a rigid concentration in the administrative apparatus, under exclusion of all parliamentary obstructions and the potentialities which they held for enemy propaganda, imperative. If it is pointed out that this, on the other hand, encouraged the NSB, it might be answered in brief that the Reich Commissioner consistently refused the formation of a government by this party. The fact that parties, which were already in existence in the country or were to be newly formed the ideology of which was friendly to the occupying power, were encouraged by the latter is also not outlawed by international law. Inasmuch as no official administrative powers were vested in the NSB and since political organizations had no influence on the administration it is also immaterial that in the year 1943 this party announced itself as the representative of the political will of the Dutch Nation. It always has been and still continues to be the practice up to this day that occupying powers encourage and assist political parties friendly to them. The charge of Germanization is unjustified. By reason of its descent, the Dutch people always were considered to be Germanic and it is therefore not feasible to make Germans of them. A perusal of Dutch history shows us that for centuries the Dutch people always belonged to the Federation of the German Reich, and he who roves through the country can still see in Greningen's coat-of-arms the German Reich Eagle, as well as Amsterdam's coat of arms carrying the emblem of the German imperial crown since 1489. The first and the last Salic Emperors, Konrad II and Heinrich V, died in Utrecht. It is but natural that in view of the blockade against the sea and the colonies, the occupying powers desired to direct the country towards Central Europe and it never was intended, certainly not by the Reich Commissioner, to cut out the national traits and the independence of the Dutch. It was perfectly justified for the defendant to declare in his speech of 9 November 1943 in Utrecht (Doc. book 102) among other things, "We ourselves would cease to be Europeans should we fail in our mission to maintain and to promote this rich luxuriance of characteristic and blood-bound cultures of the European people."

Equally unjustified is the charge of the French Prosecution in regard to pressure in the interest of Holland's entry into the war. There did not exist a ban against enlisting volunteers of Dutch nationality in the German Wehrmacht. Article 45 of the law on land warfare merely forbids compulsory recruiting for war activity against the own fatherland. This did not make obsolete the decrees of the Dutch criminal law (referred to by the Prosecution) applicable to the person who takes up arms voluntarily, a decree which was strengthened during the war by Royal edict. The same holds true as regards regulations on citizenship for these volunteers and marriage to German nationals. Inasmuch as these orders of the Reich Commissioner could have legal value only within the limits of the German Reich, the interpretation of law that they do not constitute abuse of sovereignty in the sense applied by the Prosecution can be maintained in good conscience. That a press had to be silenced which notoriously placed itself in opposition to the occupying powers goes without saying.

The French Prosecution points to another suppression of sovereignty through removal of intellectual life as a result of the closing of universities and the demand for a declaration of loyalty remains within the framework of the convention governing land warfare. Article 45 prohibits compulsion of the inhabitants of an occupied country to take an oath of allegiance. According to the wording of the declaration it is merely demanded to abstain from any action directed against the German Reich or its army. Inasmuch, however, as the population of the occupied country is bound to obey the occupying power governing the State, this statement, which does not make an active demand, cannot be considered a violation of international law.

The organization of government was taken over almost entirely and maintained, despite an attitude of pronounced rejection, even animosity; especially one refrained from interference in the field of the judiciary. The only reproach in this direction is the dismissal of the President of the Court of Justice at Leeuvarden. The defendant expressly declared to assume responsibility for this case, and he has the perfect right to do so. The occupying power can interfere in the field of the judiciary only when the purpose of the occupation is in jeopardy. If a judge refuses administration of justice—even though the cause for his complaint was eliminated as was the case in this instance—then the occupying power has the right to remove from office the judge concerned.

Acts of Terror

The French Prosecution then continues, asserting that the defendant initiated a series of acts of terror. In the course of the presentation of evidence on this point, we have heard what collective punishment was about. Kammergerichtsrat Rudolf Fritsch and President Joppich further proved by their testimony that the defendant was extremely conscientious in the application of the right to grant pardon and that he restricted the infliction of capital punishment as much as possible; and as regards Police summary courts, the defendant and the witness Wimmer have proved that this was a procedure applied in a few single cases only, headed by an official of the judiciary—the respective defendant having the right to use the services of a defense counsel freely appointed, of Dutch nationality and that, furthermore, this procedure found application for two weeks only. Even at this time we still find in a considerably more severe form some such special type procedures for emergency purposes used by powers of occupation.

The elimination of regular courts and one of the main-points of the Prosecution is the question of hostages, which I must therefore discuss in detail. Dr. Nelte has already discussed its juridical aspect in general, and I refer to his statements. In RF 879 the Prosecution has now chosen two particular cases. The so-called hostage shooting at Rotterdam and the one after the attempt against the senior Leader of the SS and of the Police. Already in the course of his first interrogation by the plaintiff, the defendant referred to the first case of the Wehrmacht's demand for 25 to 50 hostages. The witness Wimmer confirmed that these hostages had been demanded by the Wehrmacht, that through the defendant's influence this number was finally reduced to 5, and that the Senior SS and Police Leader was entrusted with the shooting.

The relation between the Wehrmacht and the Reichcommissioner, as well as the relation between the Wehrmacht and the Police, is regulated by the decree dated 18 May 1940 Reich Law Gazette No. 1, page 778, 1376 PS in paragraphs 2–3. In order to convict the defendant, the Prosecution submitted the accusation but not the testimony of General Christiansen. In the course of an interrogation the defendant did not take the oath. The record proves that—

a. The order was issued by the Wehrmacht on account of grave cases of sabotage and was analogous with the so-called "Law governing hostages" in Belgium and France.

b. The arrest of the hostages was then carried out by the German Police on the order of the Commander of the Wehrmacht in Holland. "An order is an order."

c. The German High Command or Command West persists in the execution of the orders notwithstanding all representations.

d. Execution by the Police.

e. Proclamation I made in the Juridical Department of the Headquarters of the Wehrmacht in Holland. Proclamation II drafted by the Senior SS and Police Officers.

Would the Tribunal consider the justification of the defendant as standing the test in the event of his using the arguments of General Christiansen for his justification?

As to the second so-called hostage case, it is dealing with the consequences of all attempts directed in March 1945 against the senior SS and Police leader SS Obergruppenfuehrer Rauter, the highest Police officer in Holland, who was directly subordinated to Himmler. Remembering the consequences of the murder of the tyrant Heydrich by the Czech Patriots in 1942, we can well imagine Himmler in 1945, at the height of his power, avenging the plot against one of his nearest and most important lieutenants. It is likewise understandable that the defendant, as head of the administration, ordered deterrent measures to be taken in the sense of general prevention after an attack had been made on one of his general commissioners. He, however, did not demand any hostages, but only the consummation of juridically closed criminal cases No. RF 879 proves the truth of these assertions of the witnesses Schoengarth, Lagos, Kolitz, and Gerbig, that only men sentenced to death and not 200, but 117, were shot, partly possibly before the originally fixed date of execution. This also is confirmed by the Criminal Commissioner Munt in D II of the report of the Dutch Government, and likewise Dr. Friedrich Wimmer, who was interrogated by the Court. In this case it is not at all the question of hostages in the original sense, but the justified execution of saboteur, pilferers, etc., from the viewpoint of the occupation which was called the shooting of hostages in order to terrify the population. The fact that the defendant achieved the cutting down of the number of 500 real hostages, originally demanded by Himmler, to 117 orders of execution can certainly not be a reason for calling him responsible for Himmler's cruelties! The prosecution furthermore asserts that the defendant, in his capacity as Commissioner of the Reich, had agreed in, directed, and supported the transfer of an enormous number of

Dutchmen to Germany. The principal question of the employment of foreign workers has already been widely discussed by other defense counsels. May I be allowed to add a few remarks to this count of indictment? According to my information received from the statistical department, 300–500,000 men out of a population of 9 millions were out of work, a chronic situation in the economic life of the Netherlands, which were more or less rightfully considered one of the richest countries of Europe. At the time of the Reich Commissioner taking over governmental power he considered it his duty to deal with unemployment in the interests of order and peace. It was evident that this could not be achieved according to liberal principles, the more so that even in countries adhering to the liberal economic order, the demands of the war period were directed unilaterally, as necessitated by war conditions. Until 1943 the labor commitment was effected according to the voluntary principle. The defendant himself explained that a certain compulsion was used. He had found great understanding in Minister Speer in particular for his plan of enabling the workers to be used in their home country by transferring German undertakings from the Reich to Holland. In 1943, 3 classes of young unmarried men were called up by Labor offices but not by compulsion. As certified by Lammers, the Reich commissioner refused in 1944 the commitment of 250,000 workers who had been requested by the Reich. The "Man hunting project" of the autumn of 1944, i.e., the mobilizing of the entire able-bodied population was, as contested by the witnesses Hirschfeld, Schwebel, and Wimmer, a drive by the Wehrmacht for which the defendant cannot be considered responsible. On the contrary, the fact must be expressly insisted upon that the Reich commissioner diminished the hardship of these measures by the issue of 1,000,000 postponement certificates, and by urging a regulated transportation possibility as well as the mobilization of workers initiated by him, whereby it should not be overlooked that the steady growth of the opposition movement rightly caused uneasiness to the Wehrmacht, considering the grave danger for the occupation forces by the accumulation of people in the Southwestern Provinces.

To summarize, it must be juridically noted that the defendant was subject to the orders of the central administration within the framework of the Four Year Plan, that but for such orders and demands he would never have sent workers to the Reich, and that he strongly opposed it as far as its execution was not in conformity with the laws of humanity.

As to the next point of the prosecution, the so-called economic looting of the country, it has likewise to be referred to the first basic interpretations. The confiscation of raw materials was carried out in the first day of the occupation within the framework of the Four Year Plan, with the collaboration of the Dutch authorities, who thus had the opportunity of diminishing unnecessary hardship. It is evident that the defendant would have preferred to keep the stocks within the compass of his own administration. The defendant insisted in every single case of requisition on proper compensation basis, and prevented the transfer of institutions, as for instance the Margarine factory Dortrecht or the Leyden Icc. works. As, under pressure of the Reich Commissioner, Goering promised that the Dutch people should not be treated worse than German citizens, it would appear that according to a not too narrow interpretation, Article 53 of the Hague Convention of Rules of Land Warfare had therefore in this point been carried out by the defendant.

The reports of the Field Economy Officer with the Wehrmacht Commander in Holland dated 9 October 1944 (*RF 132*) and of Lieutenant Haupt (*3002–PS, USA 196*) prove that the confiscations were in the first instance the work of the Wehrmacht.

This latter shows that the difficulty of this whole position arises particularly from the fact that Reich Commissioner Seyss-Inquart is still here, notwithstanding that he has almost resigned. This merely shows that the defendant always diminished or opposed any cases of hardship in this sphere to the best of his ability. The removal of stocks of raw material and rolling stock in the course of a total war after the invasion and in view of the approaching enemy is equally justified within the framework of international law.

The emergency situation created by the war called for the reestablishment of Dutch economy in Europe. Before the war, according to official statistics, 39 percent of the gainfully employed population were engaged in trade and industry, 23 percent in commerce and traffic, and 20 percent in agriculture. By being cut off from the rest of the world, the shipping industry was completely shut down and merely as an example it may be stated that 60 percent of the trade passing through Rotterdam Harbor consisted of German goods. The highly developed agriculture was a pronounced luxury cultivation, and dependent on artificial fertilizers from South America and concentrated fodder from Canada. We have learned from the testimony of Dr. Hirschfeld, how relatively well Dutch agriculture and particularly the world famous cattle breeding have survived the war. This was only possible through understanding collaboration of the Reich Commissioner and the local administration offices, and through their support by the defendant.

The alignment of economy in respect to the great space (Grossraum) of Europe, which during the war was almost exclusively governed by Germany and her allies, offered without a doubt great possibilities of disposal for Netherlands trade and industry. It was therefore natural that also in a financial respect an assimilation of the economy to conditions in the German Reich or respectively to the European economic area had to take place. A regulation of the financial economy was already necessary in view of the price policy. It would exceed the limits of these trials to state more details here. May it only be pointed out to the Prosecution that the defendant did not have any influence on the amount of the occupation costs, and did not even have any possibility of examining them; only the civilian budget was settled by the Reich Commissioner with the consent of the Reich and under the supervision of the Reich Treasury (Reichsrechnungshof). In agreement with the Dutch agencies civilian requirements were set at 3 million guilders per month, which was not exceeded, on the contrary, at the end of 1943, a saving of 60 million guilder resulted which remained in the Netherlands. The lifting of the customs borders in interstate traffic was justified by the uniform price policy and could only have an effect favorable to the Netherlands. The relationship between Marks and Guilders was also determined by mutual agreement. A difference took place for the first time when the blocking of foreign exchange was rescinded. Here the views of the previous Dutch Chief, General Secretary Trip, and those of the General Commandant Fischbeck differed. The defendant, who after all was not a finance man, submitted this important question to the central Reich authorities for their decision, and the defendant Goering has expressively stated during the presentation of evidence that he decided in favor of Dr. Fischbeck's opinion against the opinion of Reich Minister for Economy Funk. The defendant therefore cannot be charged with any criminal responsibility, not even that of a culpa in eligendo, if in the place of General Secretary Trip, who had resigned, he now appointed Rost van Toningen, who as former Commissioner of the League of Nations surely was an excellent finance expert. The defendant Funk has also testified here that he has always considered the clearing debts as true debts. In the Netherlands government report it is pointed out that the financial demands of the Reich reached approximately the same total in all occupied western territories and that only the methods differed. The method employed in the Netherlands would have brought the result, if the conclusion of the war had been successful to Germany, that the Netherlands would have had a real demand in the amount of 4½ billion guilders against the Reich! The whole question therefore does not belong into a criminal trial but into the peace negotiations. Furthermore, exact books were kept about everything, and so may it only be noted that the conductors of the Netherlands Tramway Associations always marked down nicely and properly when a member of the Wehrmacht used the tramway with a free ticket.

As far as the alleged looting of museums and libraries is concerned, as well as the looting of the royal property, it must be referred, for brevity's sake, to the results of the presentation of evidence which proved beyond doubt that the defendant particularly attempted to safeguard the world famous public art treasures and that he reduced arbitrary acts of the Reich offices, if such occurred, to a minimum.

As far as the seizure of objects not essential for the conduct of war, as for instance, art treasures, libraries, etc., is concerned, the defendant did not participate in it. He acquired the few pictures which he bought for Vienna on the open market. With respect to the royal property he issued such instructions that this confiscation of property remained only a demonstration. This is also evident from the Dutch governmental report. The repeatedly mentioned library Rosentaliana did not reach the Reich, as the defendant stopped the transport which had been carried out against his will at Groningen. The case Arnheim seems likewise cleared up by the witnesses Dr. Hirschfeld and Wimmer and the report of the field economic detachment (*Doc. 81*).

The Jewish question has also a certain connection with the economic problems. Before I deal with this main subject, I must absolutely talk about the position of the police in the Netherlands. The prosecution wants to prove that the police and namely also the German police, particularly the Security police, was subordinated to the defendant. Contrary to this attempt is the fact that in all the signatory powers, with the exception of the Soviets, the police is actually a part of the civil, particularly the domestic, administration. The situation in Germany was like this—"de facto" and not "de jure". Himmler was independent, even more powerful than any other Minister, although he was nominally State Secretary of the Interior. Disciplined and centrally directed the SS was subordinate to him in his capacity as Reichsfuehrer. The defendant Keitel testified on 5 April 1946 that since the outbreak of war the SS became more and more an independent power factor in the Reich. He and his assistants had not been informed of Himmler's full powers, and Himmler and Heydrich had usurped the jurisdiction over life and death in the occupied countries through the frequently mentioned Fuehrer order.

What was the situation now in the Netherlands?

1. The Fuehrer decree of 18 May 1940 already reveals that the German Police was not part of the Reich Commissioner's organization nor was it subordinated to it. For it says in the decree "The German Police is at the Reich Commissioner's disposal", which would not be necessary if it were part of the Reich Commissioner's Office. Thus even if the Reich Commissioner is the supreme governmental power in the civil sphere, the police is not included in it!

2. The Reich Commissioner publicized the administrative agencies in decree No. 4 and that in such a way that the Dutch could clearly see what concerned them, without being affected by the differences of the Reich authorities. As regards the Police, i.e., the German and Dutch Police, a second General Commissioner as such is appointed for Security affairs (Senior SS and Police Officer). According to article 5 of this decree the Senior SS and Police officer (HSSUPF) has under his command—

a. The German Police and the Waffen SS (this statement is declaratory for the Dutch, for the Senior SS and Police officer was appointed by the Fuehrer on Himmler's recommendation without the Reich Commissioner being consulted). Rauter presented himself to Reich Commissioner as being already appointed, and in the opinion of the prosecution as well, the Reich Commissioner would never have been able to appoint the Commander of the Waffen SS.

b. The Dutch police (this fact is essential, since for the Dutch police the Reich Commissioner was competent).

The Dutch witness, Dr. Hirschfeld, who was general secretary throughout the period of occupation expressly confirmed that Rauter was directly subordinate to Himmler and that the apparent unity of the police and administration according to the decree did not exist in reality.

On page 21 of his book "Axis rule in occupied Europe", Raphael Lemkin defines the task of the police as being the liquidation of politically undesirable persons and Jews, just as the main responsibility for the seizure and deportation of labor for labor commitment in occupied countries was charged to the police.

From what has been said it is shown that the Reich Commissioner has to assume only a limited responsibility for the German police, that is to say insofar he exerted it for the carrying out of his orders in civilian matters. When the Reich Commissioner called upon their help, the police customarily got in touch first with Himmler about the matter in most cases. But in all matters which fell within the competence of the police, the Reich Commissioner could neither issue orders to them nor intervene "de jure" in their activity. This must absolutely be kept in mind when judging the Jewish question, the concentration camps, and the deportations.

The admissibility of special courts and police protective custody is even recognized in the Dutch governmental report. The arrests and management of concentration and prisoner camps was the affair of the police. As explained in detail by the defendant when examined as witness, he went, as Wimmer and Schwebel also confirmed, to great trouble to put an end to abuses in the camps which became known to him. We shall here only briefly refer to the treatment of the so-called Dutch-Indian reprisal hostages with whom the defendant concerned himself considerably and finally the fact that he succeeded in having the members of the clergy who had been imprisoned in the Reich enabled to return to the Netherlands.

After having thus briefly sketched the position of the police and their tremendous power I shall go over to one of the main points of the indictment, i.e., the Jewish question.

In the trial brief it is stated by the prosecution that Reich Commissioner Seyss-Inquart alone is fully responsible for the execution of the Nazi program for the persecution of the Jews in Holland. That in his Amsterdam speech before the members of the NSDAP on 13 March 1941 he himself had declared, "For us the Jews are not Dutchmen; for National Socialism and for the National Socialist Reich the Jews are the enemy." In that speech Seyss-Inquart also explains why, as defender of the interests of the Reich, he believed he had to adopt that attitude against the Jews. He saw in them those whose influence on the German people would paralyze its will to resist and who would appear everywhere as the enemies of the German people. But from that very speech it can be established that Seyss-Inquart considered all measures against the Jews as safety measures for the duration of the war. He speaks of his desire to create endurable measures during the period of transition and that after termination of the occupation it would be up to the Dutch people to decide what the fate of the Jews was to be. It was quite natural and obvious that during the past war, as a result of the treatment they experienced in Germany and later in the occupied territories, the Jews, without distinction as to nationality, belonged among the most bitter enemies of National Socialist Germany. That had to be taken into account by every official who had to look after the interests of the Reich in occupied territories. This also makes the speech referred to in the beginning understandable. Therefore, when Seyss-Inquart was commissioned by decree of the Fuehrer to preserve the interests of the Reich in Holland, he also had to adopt some kind of an attitude toward the Jewish question. It was his intention to remove the Jews from leading positions in the government and industry for the duration of the occupation, but otherwise to refrain from any further measures against them. Actually, he also instituted only such measures whereby the Jews were sent on leave or were retired. In the meantime, the exclusive handling of the Jewish question, with full powers and for the entire sphere of German interests, had been transferred by Adolph Hitler to Himmler, that is, Heydrich, exclusively. Now, the Security Police, not satisfied with the dilatory handling of the Jewish problem by the Reich Commissioner, invoked their plenary powers and established an office in Amsterdam whose interference was the cause of constant frictions with the deputy of the Reich Commissioner in Amsterdam. The Security Police claimed they were unable to guarantee the safety of the Reich, the task entrusted to them, unless further measures were taken restricting the Jews in matters pertaining to economics and to their personal liberties. English and French people had been gathered in individual camps and had been driven over the border into the Reich after their property had been confiscated as enemy property, a treatment which Germans living abroad had likewise experienced in enemy countries. In particular, the Police pointed to the fact that very many Jews were actually involved, and often took leading parts, in all the more serious attempts at sabotage and other forms of resistance. Likewise, the Dutch Jews, whose ancestors had in part come from proud Spain, the greatest portion having come from Germany and the East as emigrants, had already been active in leading positions before the occupation in opposition to National Socialism in industry, but more especially in the press. When the enemy entered the country, they knew it would be a life-and-death battle and, contrary to Shylock's words in The Merchant of Venice, "For enduring is the heritage of my tribe" they not only placed their property at the disposal of the resistance movement but also their lives. The Reich Commissioner also could not fail to pay heed to this fact. Because of the great number of persons involved a treatment of the Jews roughly similar to that of the English and the French or other enemy aliens by confinement in a camp was simply not possible. Measures affecting personal liberty of action were taken by the HSSUPF as Himmler's direct subordinate, or by the Security Police or direct order by Heydrich. At this point also belongs the introduction of the Jewish star, which the Dutch, by the way, did not consider a mark of defamation. At the same time that measures affecting the personal freedom of action were taken, the property of Jewish organizations and Jews was also taken under management. The Reich Commissioner appointed Dr. Boemker as his special deputy, with the task of supervising the measures taken by the Police—so far as this was possible administratively—and to prevent excesses. As a matter of fact, he intervened a number of times and was able to prevent bad police measures.

The activity of the Reich Commissioner's Office was largely concerned with economic measures, and the description by the Dutch Government Commissioner for repatriation (*USA 195*) gives a clear illustration of the entire Jewish problem in Holland. The table shows that the Reich Commissioner was able to delay measures against the Jews for almost a year and that really intensive measures did not begin until February 1941 with the formation of the Central Office for Jewish Emigration which was ordered by Heydrich and under the supervision of SS Obersturmfuehrer (SS first lieutenant) de Funte. A comparison with measures taken against the Jews in Germany itself and in other occupied territories shows a pronounced uniformity, which likewise indicated that the measures in question were not taken by the Reich Commissioner but were measures taken uniformly by national offices, in other words, by the Police. The Reich Commissioner also saw to it that sequestration of Jewish property moved in orderly channels. When it finally came to the liquidation of property, via orders from the Berlin Central Offices, liquidation proceeds were not confiscated but credited to the Jewish property custodian so that, finally, the Jewish administrative office had accumulated some 500 million guilders. In order to put an end to the constant pressure and interference of the Police through Heydrich, the Reich Commissioner together with HSSUPF (Senior SS and Police Officer) tried to stabilize the Dutch Jewish question by assembling in two sections of the city of Amsterdam and in two camps, the Jews affected by the restriction ordinances where they were to live under their own administration. One of the camps was Westerborg where they had a Jewish camp police of their own; with regard to the outside the camp was under the supervision of the Dutch Police. When, in the Spring of 1945, it was occupied by the Canadians, the English radio reported that they found the Jews housed there in good condition, contrary to other camps which were found outside of Holland. The second confinement camp was to be Vugth. Himmler made a concentration camp out of it. The Jewish community of Amsterdam was under the direction of Ascher, a merchant dealing in precious stones. Funds were made available to the Jewish community, especially for school purposes; negotiations were carried out with firms to provide work in the Jewish quarters.

In the beginning of 1942 Heydrich, that is Himmler, demanded transfer of the Dutch Jews into assembly camps situated in Germany. Both invoked the plenary powers given them by the Fuehrer and pointed to the fact that sooner or later an invasion had to be expected; Holland seemed a suitable territory because the ports of Rotterdam and Amsterdam provided suitable bases for reinforcements and that from here was the shortest route that the British could take into the Ruhr region, the industrial center of Germany. To permit so many people, extremely hostile to Germany, to remain in a territory which would see future operations in the battle against England was inconsistent with the safety of the Reich. The Police persisted in its stand and the Reich Commissioner was able to intervene only by taking steps to make the evacuation by the Police more humane. The Reich Commissioner was able to bring about that thousands of Jews were exempted from evacuation and were so able to remain in Holland. The defendant had the internment camp inspected by his agencies and in particular corrected bad conditions through the intervention of the Christian church, so far as this was within his power. The order for evacuation was not given by the defendant but by Himmler or Heydrich. The defendant did not even give his consent to the evacuation. As a result of steps taken by the defendant, a part of the Jews was taken to Theresienstadt, considered a place of encampment, ostensibly under the supervision of international agencies, such as the Red Cross and where the Jews were said to be well treated. As a result of exemption regulations brought about by the Reich Commissioner, a great many Jews could be exempted from evacuation. The above-mentioned Dr. Boemker was charged with supervision of the transport of Jews in Holland and it became possible to correct abuses repeatedly through HSSUPF. The greater part of the Jews was taken to Poland and it is probably one of the most terrible sentences, found in USA 195, one of the documents submitted by the prosecution, which reads, "Total number of those deported 117,000. After they had left Holland every trace of them was lost; they merged into a mass of deportees coming from all occupied countries and no longer could be identified as an individual group."

Now comes the cardinal point of the entire indictment, the dramatic climax in the trial against this defendant. Did the defendant know of the destiny of these many unfortunate and innocent people; did he intentionally approve it or does he become guilty because he did not prevent it? The defendant has again and again, even when questioned as witness under oath, solemnly declared that he did not know anything about this, and that he was of the opinion that the Jews would actually be resettled in the East for the duration of the war. When the defendant once had the opportunity in the year of 1942 or 1943 on the occasion of a report to talk to Adolf Hitler himself, he turned the discussion to the Jewish question. When the Reich Commissioner pointed out that the evacuation of the Jews was causing serious unrests in the Netherlands, Adolf Hitler replied that he had to segregate the Jews as destructive elements from the body of the German people, and that he wanted to resettle them in the East. When Himmler, the Chief of the SS and of the German Police, was questioned by the defendant in the beginning of 1944, he replied to the apprehensions of the Reich Commissioner with the words that he should not be worried about his Jews, his Dutch Jews were his best workers.

The representatives of the government sent into some camps returned with the reports that the Jews were doing well and that they were satisfied. News from the deportees also arrived in the Netherlands at regular intervals, although they decreased later on. Today, when the heavy curtain which was spread over the horror of these mass murders has been lifted we know the connections and the truth. Especially by the conscientious researches in these trials, it has been established that Hitler and Himmler have undertaken in a practically fiendish way to obscure and to cover the knowledge of their criminal intentions concerning the final solution of the Jewish question. When I read the Dutch report about the Jewish question for the first time, I myself was deeply moved. It is this document and the so-called Hossbach last will of Hitler (Hossbach'sche Hitlertestament) from the year of 1937 which I have especially submitted to my client. Dr. Seyss-Inquart told me about the Hossbach document in which the evacuation of 1 million Austrians was demanded, "that he has never seen this document and never heard about it, either. If I had known such an intention, I would never have participated!"

When I further presented to him the document concerning the Jews, he stated in a convincing way not to have known anything about the final solution and the happenings in the extermination camps! When I then expressed my opinion, why he did not quit, after he could not prevail with his views upon Himmler and his accomplices especially concerning the Jewish question, he told me that, after all, he was a soldier and knew that a soldier must not desert in wartime. He had come to the conviction that he, besides the other tasks charged to him, also remained on his post for the reason that something better would hardly have followed for the Netherlands! In my duty as defense counsel and jurist, I can add the following, one could not count on the extent of extermination which the prosecution mentions. If it has taken place in the stated extent, these are actions of a special group of Himmler's hangmen which correspond to a desperate situation only. But in penal law, the principle applies that the causal chain is interrupted, if an independent criminal act is interposed in the latter. This is the case here.

Before I conclude the most difficult chapter of the entire accusation, I should still like to examine the question, if the defense of the defendant that he actually could not have had any knowledge about the terrible crimes which happened in the extermination camps is credible. To this point I should first like to present the testimony of a French doctor who himself was a prisoner in an extermination camp for a long time. This is Goutbien, M.D., from Montgeron (Seine-et-Oise) who writes in RF 107.

"It is difficult for a normal man to conceive an exact picture about a concentration camp which is designated in the German language by the two letters 'K.Z.'.

"It is difficult for various reasons; first of all, a man educated according to the principles of our civilization which is completely ruled by the elementary Christian humanitarian doctrine cannot believe the truth of the statements made by the victims of so many atrocities; the sadism, the exaggerated refinedness concerning sufferings is above the normal capability of perception; furthermore, the Nazis have tried to disguise their crimes in a hypocritic way, so that a foreigner who would have inspected a concentration camp two or three years ago would have been impressed by the order and cleanliness in it.

"If a jurist had examined the execution cases, he would always have found at least sufficient reasons, if not valid ones, for their justification. Finally, if a doctor had searched for medical documents, he could have very easily concluded normal causes of death.

"That is how heavy the curtain was which covered the concentration camps, and which the SS kept carefully and jealously down. The SS tried to give a legal appearance to their crimes; the thing in question here is a characteristic appearance of Hitlerian hypocrisy."

In a similar way the Jesuit father Kuehle also expresses himself in his books "The concentration camps, a question of conscience for the German people." He writes: Page 19 * * * "and he believed to be able to prevent the self-unmasking by an absolutely tight ring of silence with which he surrounded his works. This ring was closed so tightly that a German had to travel abroad in order to learn something concrete about the camps and to read there about the 'Soldiers of the Peatbog' (Moorsoldaten). At home books like these did not exist, and one learned only very little from mouth to mouth. Nobody got out of the worst camps, and the perpetrators of the crimes themselves were 'liquidated' from time to time, so that they could not tell anything. But the few who got out of the more moderate camps were so much intimidated that they gave only quite general, obscure hints, quite enough, in order to create in the entire people a general feeling of horror of these mysterious places.

"But even the little which went from mouth to mouth never came to the knowledge of higher officials of the Third Reich. Because if they went after these things, the police learned about it and the latter then took care of it that the bearers of such 'atrocity propaganda' kept silent. Therefore, as time went on, one refrained from telling something to such officials."

But the most important testimony is that of one who knows, who himself had an active share in the liquidation of the Jews. On 25 June 1946 Dieter Wisliceny, the special representative of Eichmann who was in charge of the liquidation of the Jews, was questioned as witness by the appointed judge of this Tribunal. He stated that commissions of the International Red Cross or foreign diplomats were guided to Theresienstadt, in order to simulate the normal status of the accommodation. The Jews who were brought to Auschwitz were forced to write postal cards before they were murdered; these postal cards were then mailed at long intervals, in order to create the impression, as if the persons were still alive. He has invited different representatives of the press. To the explicit question "Under whose jurisdiction was the Jewish question in the occupied countries, under the commander of the regular police, the Security Police, or the Security Service?" he gave the answer "According to my knowledge, the Jewish question in the other occupied countries was an affair of the Senior SS and Police Officer, pursuant to a special order by Himmler!"

In order to make the deception even more intensive, 500 Reichsmark were for instance demanded by the Slovak government for every Jew as settlement contribution. I have reproached the defendant with this, and he told me that Himmler also demanded from him a settlement contribution of 400 Reichsmark for every Dutch Jew. He as Reich Commissioner refused this in consideration of the incomplete statements concerning the actual settlement of the Jews and with the reference that the final settlement would have to be left for the time of peace.

At his own initiative the defendant has also pointed during his examination to individual cases of sterilization. The suggestions I made to have the letters written by Seyss-Inquart to Himmler procured as evidence show the following fact, in conjunction with the statement of the defendant.

Contrary to the statement of the then 18 year old informant Hildegard Kunze, Seyss-Inquart never reported through any sort of official channels to Himmler about the Jewish question.

Seyss-Inquart rather demanded of Himmler not to aggravate the situation of the Jews in the Netherlands any further, and he referred in this connection to the measures which had been carried out in the meantime against the Jews and which exceeded the measures in the Reich, pointing out at this occasion the cases of sterilization.

Seyss-Inquart took immediately a stand against the sterilization of women and stated to the Christian churches that no coercion must be exercised. As a matter of fact, no further cases occurred after a short period.

With respect to the case itself, the defendant can only be made responsible so far as he did not take a stand against it immediately, without being certain, however, to be able to prevent the act. The reasons for the attitude of the defendant becomes evident from the letter which was requested as evidence it was the worry that the situation of the Jews could be made worse and the supposition that these Jews would be spared further attention from the police in the future.

In any case, so far as measures against the Jews originated from the defendant, they were issued only as measures against enemy foreigners for reasons which the defendant mentioned in his speech of 21 March 1941 in Amsterdam. Whatever happened beyond that, took place on the express order of the Reich Central Agencies, especially Heydrich and that primarily through organs of these Reich Central Agency themselves.

A further point of the indictment is the claim that the defendant as Reich Commissioner, in accordance with the planned extermination and weakening-policy toward the occupied countries, had deliberately neglected the food supply of the Dutch, which had finally resulted in a starvation catastrophe. Claims to this effect appear to be refuted by the testimony of witnesses Dr. Hirschfeld and von der Wense, as well as by those of the defendant himself. The whole food supply machine remained from the very beginning under Dutch direction in the interests of the population, although it was known to the Reich Commissioner, that it was just in this field that leading cells of the resistance movement had established themselves. The food supply in the Netherlands was most assuredly not worse than in Germany, from where in particular bread grains were supplied. As late as the year 1944, the food value consisted of 1,800 calories, before that 2,500 calories, to which there were still additions of the utmost variety.

The Reich Commissioner also succeeded in bringing to a halt the knapsack traffic of the Wehrmacht which was mentioned in the cross-examination, through intervention with the Reich Food Administration, even if it was only in the year 1943.

To what extent the Dutch food economy was supported by the defendant, as for example by furthering the N.O. Polders, by countering the extremely great demands of the Reich is confirmed by the witness von der Wense.

That the Dutch manufacture of nitrogen could be reserved for Dutch agriculture until September 1944 is the exclusive achievement of the defendant. From autumn 1944 on, the situation in the field of food supplies deteriorated considerably. The country for a large part had become a war zone after the invasion, and the transportation routes had been smashed through innumerable air attacks. This had the result that a difficult food situation was caused, particularly in the West of Holland, where millions of people were compressed into a small area in three major cities. Considering the small number of occupation troops, it would already have been a giant blunder in itself to drive these crowded masses intentionally to desperate resistance through starvation.

When now in September 1944 a strike of railway workers and shipyard workers broke out, caused by the London government-in-exile, which was counting on a favorable conclusion of the battle near Arnheim and with a German collapse in the very near future, then viewed from the standpoint of international law, this was an emergency in which the country had placed itself toward the occupant. It was natural that the Wehrmacht occupied all available shipping space in order to secure their food supplies for their own defense. In order to avoid repetition, may I refer to the testimony of von der Wense and Dr. Hirschfeld and state here as the most important fact that the witness Dr. Hirschfeld testified that the Reich Commissioner gave the order for rescinding the blocking of shipping traffic already on 16 October 1944. He had been able to count on the fact that the blockade of 4 weeks, which was not planned as a reprisal measure, would not cause any damage because sufficient food stocks were on hand or could be sent into Holland in the months of November and December. He actually effected already the rescinding of the embargo at an earlier time, the establishment of a special transport organization and the importing of food stocks from the northeastern provinces by means of German means of transportation. As the failure of the Dutch transport organization, the constant day and night attacks of enemy planes, sabotage of the resistance movement, and last of all a great shortage of coal hampered the supply action, the emergency caused by the strike still cannot be in any way charged against the defendant as a criminal offense. In any case, the statistics presented by me have shown that during the entire period of occupation until the middle of 1944, the population steadily increased and that general living conditions under wartime considerations did not suffer a considerable deterioration at all.

As the food situation deteriorated more and more throughout the war, the defendant cared for the importing of food stocks on German transport trains and also furnished them for children from German Wehrmacht stocks. He demanded supporting actions of the churches and of the Red Cross, although the Geneva insignia was repeatedly misused by the resistance movement. The Crown Prince of Sweden, as President of the Swedish Red Cross, expressed his special gratefulness to the Reich Commissioner. The Reich Commissioner finally contacted the Dutch government-in-exile through its trustees and in this manner initiated the conclusion of an agreement with the Allied Supreme Command, whereby the subsistence of Holland was secured and the occupation was effectively brought to an end.

In Allied military circles at that time one still figured on 60 days' resistance. The German occupational troops in the Netherlands would certainly have been able to do this, although this would have caused the destruction of the country and its population.

I come now to the last point of the French indictment, to that of the floods and destruction caused by the occupying power. If the Prosecution had not brought up this point, then I as defense counsel would have discussed this matter before the Tribunal, because this matter especially gives the defendant the opportunity of appearing, for him, in another light. In referring to the testimony of the witnesses Wimmer, Schwebel, Dr. Hirschfeld, and General von Kleffel, I should like to state the following briefly: It should be known to the Tribunal that 40 percent of the total land level in the Netherlands lies below sea level. In the course of hard work for centuries, soil was wrested from the sea again and again and changed into fertile farming land. Powerful dikes protect the land; locks and pumping installations regulate the entry of water and water traffic in the interior of the country. The constant struggle against storms and water have turned the Dutchman into a proud and freedom-loving character. "God has created the earth, we have made our land ourselves," says a Dutch proverb.

When the Canadian troops thrust forward toward the North, the Reich Commissioner, contrary to the expectations of many persons, did not take the way into the Reich from Groningen, but returned to The Hague in order to carry his responsibility until the end. He feared that the collapsing Reich might reach a policy of catastrophe which would lead to destruction in an exposed country like Holland where 271 people live in one square kilometer.

The Gothic battle, in which everything is exterminated, became a fixed idea in many heads. Goebbels, after all, has declared braggingly that if they must go, they would slam the door with such a bang that the whole world would hear it. The Reich Commissioner admonished such ideas. The "Scorched earth" order actually came, and it would have meant the destruction of all technical facilities, including dams and lock facilities in Holland and of two-thirds of the country. In unison with Minister Speer and Doenitz all this was prevented. This has also been confirmed in my questionnaire by Commander-in-Chief General von Kleffel and been acknowledged by the Chief of Staff of the American Army, Bedell Smith. Historical structures were also to be destroyed, as has been testified by Schwebel. The defense counsel of General Christiansen informed me that besides the technical troops of the Wehrmacht which carried out detonations and floodings justified by the war situation, men sent by Himmler also appeared in order to carry out destructions behind the back of the Wehrmacht. All this was prevented by the intervention of the Reich Commissioner, who was conscious of his responsibility, and the country was saved to a great extent from destruction which could never again have been repaired. Since May 1932 there has been a simple memorial on the dam of the Zuidersee, the largest water structure which has ever been constructed, which bears no name whatsoever, only the proverb: "A nation that lives builds on its future." Regardless of how the trials may end, perhaps some day the time will come when the brief words will be added under this proverb "Saved from destruction by Seyss-Inquart."

And so I have also reached the conclusion of the second accusation complex.

Slowly the curtains are beginning to fall in the act of the supposed conspiracy. I ask you, however, Is a man, who in the middle of a struggle for life and death of his nation is placed at the head of the administration of an enemy country and has tried again and again to prevent or decrease attempted excesses, a creature who could accordingly be described as a ruthless and arbitrary despot and war criminal?

However, I would not want to bring my discourse to a conclusion without also expressing some general thoughts on the trials. I esteem France and her old culture, and I have considered it an honor to be allowed as an attorney to cross swords with Frenchmen in these proceedings. I have listened to the speech of the French Chief Prosecutor Francois de Menthon with deep attention and inner sympathy. However, it cannot remain quite undisputed. De Menthon has described Germany as the eternal enemy of France and alone demanded the most severe penalty, death, against all defendants without exception! He thereby places one of the weaknesses of these trials into the foreground, namely that it will always remain a trial of the victors over the vanquished. One is reminded too strongly of the Gaul Brennus, who with his vae victis, throws the sword onto the uneven scale. Menthon with this presentation unintentionally obstructs the road to a lasting peace.

The sin against the spirit is the basic error of National Socialism and the source of all crimes, says Menthon. National Socialism is based on racial theory, a product of German mentality. But Menthon rightly explains that National Socialism is the farthest point of a doctrinaire development. There are no direct transitions in History but all is rooted in preceding ideas and undercurrents. The events of the 20th Century can only find their explanation in the developments of the preceding century. The final periods of the 19th Century are under the influence of exaggerated Nationalism, and in connection therewith it is important to confirm that it was not Germans, but French who first established the racial theory. Count Gobineau in his essay sur L'inegalite des races humaines (Essay concerning the inequality of the Human Races) and George Sorel in his Reflexion sur la violence (Reflections on Violence).

M. Menthon cites at the end of his statement "La morale internationale" (International Ethics) the work by Politis which I have also mentioned. Politis describes this exaggerated Nationalism being a real international disease, deriving from the

19th Century. He in particular mentions the case of the Frenchman Maurice Barres. He sees in the sentence "Que la patrie et-elle tort, if faut lui donner raison" (my country right or wrong) the negation of all ethical laws. I wish to refer to another Frenchman in contrast with M. Menthon. He is an unknown professor of history. The Gestapo, the German, and the French police are pursuing him. He frequently changes appearance and name. He is everywhere, we find him in the Massive Centrale, in the Auvergne-District, in the mountains near Grenoble, on the coast at Bordeaux, and in Paris. Whenever he appears army trains are derailed, ammunition depots are blown up, and vitally important industrial plants are shut down. He always remembers the words of de Gaulle: "Our country is in mortal danger, join us, everybody, fight for France!" The name of this man is Georges Bidault. The first thing he did after the enemy had been driven out of the country was to visit severely wounded soldiers in the hospitals. But he does not only go to the French. He also visits the German casualties in their wards, saying to them "Comrades, I wish you speedy recovery and a happy return to your homes." These words of the man who today is leading France, indicate to us the path towards peace in honest and free collaboration of people and nations.

Hitler wished to create a new Europe through his own methods. He failed in his efforts. Germany is beaten down to defenselessness, her towns are destroyed, her economic life annihilated. France, one of the oldest countries of Christendom, the country which at the end of the 18th Century revealed the rights of men, has therefore today the particular mission and responsibility of saving the culture of the Occident. For this achievement, however, it is necessary that distrust, poisoning the life of all countries, must be eliminated. All this in short and common to the trial.

Into your hands, my very esteemed judges, I trustfully put the fate of my client! I very well know that you will consider all the facts which speak for Seyss-Inquart.

But once more I wish to walk through the streets of Nurnberg, as I have done so often during the long months of this Trial, and from the imperial castle, now destroyed, look down on the German countryside. Out of the ruins of the old town rise, hardly damaged, the monuments of the Painter Albrecht Duerer and the Geographer Martin Behaim. They are the prophets of German Art and Science! May those two names be symbols for the future, and like a pillar of fire, lead the German people from dark misery to the luminous heights of a lasting peace!

2. FINAL PLEA by Artur Seyss-Inquart

Mr. President, with my final words, I should like to make my own contribution to the clearing up of the evidence submitted here by explaining the personal motives and considerations responsible for my actions.

I have little to say concerning the Austrian question. The "Anschluss," separated from the bulk of later events, I regard as a purely domestic German affair. For every Austrian, the "Anschluss" was a goal in itself and never, even remotely, a preparatory step to a war of aggression. For that the idea of the "Anschluss" was too important a goal for the German people, it was its noblest aim. To the German people I make the report of the German people, it was its noblest aim. To the German people I make the report of the greatest success of my life. I believed in these words of the Fuehrer when he spoke on the 15th of March 1938 in the Hofburg in Vienna. They were true. The question of the "Anschluss" became of a peace-endangering nature, far beyond its domestic significance for Germany; and when I have followed the way prescribed by Berlin in March, the reason was the following: The unjustified opposition against the carrying out of orderly elections opened the doors to a radical procedure, practically as well as psychologically. I asked myself whether I had the right to be opposed to these methods, after my way had apparently not been practicable, precisely because of the stubbornness of the opposition within and without Austria.

If this procedure, however, seemed justified, I felt it my duty to give my cooperation in the measure, and I could give it in the face of these circumstances. I am convinced that it is due mainly to my cooperation, that this fundamental change, in particular during the night of the 12th of March, took place quietly and without bloodshed, despite the fact that strong hatred was stored within the hearts of the Austrian National Socialist.

In any case, it was indifferent for the unification of the Germans, whether Germany was a monarchy, a democracy, a socialistic republic, or a National Socialist Fuehrer State. I believe that the prosecution in the various documents regarding the "Anschluss", interpret them in such a manner as to read from them my aggressive intentions towards the annexation. These are documents regarding the Danube sphere of influence, and Czechoslovakia, all dated after the 1st of October 1938, and after the Munich agreement, and regarding the Vistula district after the 1st of September 1939. I admit these statements; their correctness has been proved in the meantime. As long as the Danube area was incorporated in the Austrian-Hungarian Monarchy its development was prosperous to all, and the German element did not deploy an imperial activity but rather promoted culture and economy. Since this area is broken up through the integral carrying out of the national principle it has not settled down in peace. This recollection made me imagine a reshaping of a common Lebensraum, which, as I openly declared, must give such a social order to all, that is, Germans, Czechs, Slovaks, Hungarians, and Rumanians, which would make life worth while to every individual. In this connection I also thought of Czechoslovakia, because of the coordination of languages in Moravia which I myself had witnessed.

If, after 1 September 1939, I spoke of the Vistula area as a German area of destiny, I did so out of my striving to take precautions against future dangers which had become obvious by the outbreak of war, and which have today become a terrible reality to every German. These statements have no other evidential strength to prove the intention for a war of aggression than for instance the factual carrying out of the decisions of Teheran concerning the German territories of the East.

This war which I immediately and always recognized as a struggle for life and death of the German people had now become a fact. I could oppose but an unconditional "no" to the demand for an unconditional capitulation. I believe in the words of Rathenau "Courageous people can be broken but never bent".

In connection with the defeat, I should like to say only the following with reference to my interference with the political administration. Nobody in the Netherlands was forced to a political confession nor limited in his freedom or his property because during the occupation he had held an attitude hostile to the Reich or to National Socialism.

I have already explained that I had serious humane and legal objections to the evacuation of the Jews. Today I realize that there must be a justification for large-scale and permanent evacuations, for such evacuations are today affecting more than 10,000,000 Germans, who had been settled in their homes longer than most of the Jews in Amsterdam, for hundreds of years.

From the middle of 1944, the activity of German courts in the Netherlands was stopped on the basis of a direct Fuehrer order. Saboteurs and terrorists were to be shot by the police if their activity was proved. I heard only of such shootings at this time, never of shootings of hostages in the true sense. The Dutch patriots who lost their lives during the occupation are today rightly considered fallen heroes. Does it not put this heroism on a lower plane to represent them exclusively as the victims of a crime, thus implying that their conduct would not have been so hazardous if the occupying power had conducted itself in a proper manner? They were all in a voluntary and active relationship to the resistance movement. They share the destiny of front-line soldiers; the bullet hits him who is active in a danger zone.

Could I have been the friend of the Dutch, the overwhelming majority of whom were against my people which was struggling for its existence? I only regretted that I had not come to the country as a friend. But I was neither a hangman nor, of my own will, a looter, as the Soviet Prosecution contends. My conscience has been assuaged by the fact that the biological situation of the Dutch people during the period of my full responsibility—that is, up to the middle of 1944—was better than in the First World War, without occupation and blockade. This is testified to by the statistics of marriages and births and by the mortality and illness figures. This is certainly due in part to the effects of a number of measures instituted by me, for example, an extensive health insurance, marriage and baby houses, social graduation of the income tax, etc. Finally, I did not carry out the order which I received to destroy the country, and on my own initiative, I put an end to the occupation when resistance in Holland had become senseless.

I have two more statements regarding Austria.

First of all, if the Germans in Austria wish their community of fate with the Germans in the Reich to become a reality inwardly and outwardly, then no authoritarian obstacles may be opposed to this wish, and no cause given for interference of non-German forces in this decision. Otherwise, the whole German people would follow the most radical "Anschluss" tendency without consideration of how the rest of the political program of such a movement might be constituted.

Secondly, on the question of the effectiveness of provisions of international law during a war, Germany cannot desire any war in her own true interest. She must even see to it that no weapons are forced into her hands. The other peoples do not want a war, either, but the possibility of one is not absolutely out of the question unless the peoples abhor it. It is therefore wrong to try to minimize a future war enough to reduce the defensive forces in the nations by awakening the impression that a future world war could in some way be kept within the framework of the Hague Conventions on Land Warfare, or other international law agreements.

And now I have, no doubt, to give you an explanation regarding my relation to Adolf Hitler. Did he prove himself inadequate to fulfill a task decisive for the German people, for Europe itself, or was he the man who struggled, although in vain, and to unimaginable excesses, against the course of an inexorable fate? To me he remains the man who made Greater Germany a fact in German history. I served him and remained loyal to him. And then? I cannot today cry "Crucify him", since yesterday I cried "Hosanna".

My next thought is that of gratitude to my Defense Counsel for the high effort he has made in defending me.

My last word is the principle on which I have always acted and to which I will hold unto my last breath! I believe in Germany.

XXI. ALBERT SPEER

1. FINAL ARGUMENT by Dr. Hans Flaechsner, Defense Counsel

Mr. President, may it please the Tribunal:

The Prosecution has charged defendant Speer with violations of all 4 points of the indictment, which essentially coincide with the stipulations of par. 6a–c. The French Prosecution which has substantiated more definitely the individual charges against defendant Speer desists from charging defendant Speer with a violation of par. 6a of the Statute of the Penal Code and demands only the application against Speer of par. 6b and c. However, since the legal concept of conspiracy during the oral proceedings has frequently been clarified by referring to the person of the defendant Speer, and since the assertion was set forth that the defendant Speer also had made himself guilty within the meaning of the Penal Code paragraph of a violation of figure 6a of the Statute, the details must be entered into by way of precaution.

The defendant Speer has therefore been charged with the planning, preparations, launching, and conduct of a war of aggression or a war violating international treaties, and this, indeed, at a time when the defendant assumed the office of Minister of Armaments, which was expanded to a Ministry for Armament and War Production 1½ years later when the German Reich was at war with all countries to which she capitulated in May 1945. At the time the defendant assumed Government affairs, all the facts mentioned under par. 6a had altogether taken place and defendant Speer's activity did not alter the actually existing situation to the slightest extent.

The defendant had not contributed in the least to bring about this situation. His previous activity was that of an architect, who occupied himself exclusively with peace time construction and did not contribute by his activity, either toward preparation nor launching of a war violating international treaties. (*Compare Doc. 1435–PS USA 216, p 29.*) If under the circumstances which par. 6a of the Statute materially and legally characterizes as a punishable act it were a case of generally prevailing international law, and if individual culpability of persons who bring about these facts of the case were generally recognized in international law defendant Speer in my opinion could still not be held responsible for these facts, for not the slightest evidence has been produced during the proceedings that Speer contributed towards bringing about these facts. In this connection we must consider that culpability of an attitude requires that the person in question must have contributed in some way or other towards the bringing about of the facts which have been declared punishable, i.e., he must have caused the result which was declared punishable to be brought about. If, however, as in the case under consideration, defendant Speer entered the Government without having contributed anything at all towards the so-called crimes against peace, he cannot be charged with criminal responsibility for this, even if such responsibility could be applicable to other members of the government. The Prosecution used the expression that the defendant had accepted and/or approved the preceding crimes against peace by joining the government. Such a concept taken from the field of civil law cannot be applied to criminal law. Criminal law applies only to circumstances consisting of actions which serve to bring about the circumstances declared punishable. Nor is this altered by the introduction of the legal concept of conspiracy. In this connection reference may be made to Dr. Stahmer's detailed statement on conspiracy. The legal views set forth in that statement are also made the subject of my detailed statement. In order to avoid repetition, reference is made to it as well as to the full statements of Prof. Jahrreiss. It can, therefore, be confirmed that defendant Speer cannot be charged with a so-called crime against peace.

The personal interrogation of the defendant and the cross-examination regarding his activity have shown that Speer, by virtue of his position as architect, exercised exclusively architectural—artistic functions also in the Party set-up. Speer was the commissioner for construction in the Hess staff; here it was a matter of a purely technical task, which had nothing at all to do with any form of preparation for war. The Party, which strove to seize and influence all the vital functions of the people, had created the position of commissioner for construction, to execute and shape the Party structures uniformly. For their construction projects, the regional leaders of the NSDAP (Gauleiter) and the other Party offices were to apply to this office for consultation; however, they availed themselves of this only to a very slight extent. Naturally it was a purely architectonic task, when the Party acted as person for whom building was performed (Bauherr). It strove to give its buildings a uniformly representative character. Considering the peculiarity of architectonic will to fashion things, each architect naturally pursues his own intentions in solving the problems put to him. The activity of the defendant as commissioner for construction was therefore relatively restricted and of secondary importance, since he did not even have an apparatus of his own at his disposal. It would be erroneous to try to assume therefrom any participation on the part of the defendant in any crimes against the peace. The same holds true for the defendant's remaining functions prior to and during the war up to his assumption of office as minister (*Compare Spe. Exhibit 1*). When the defendant was given the job of reshaping the appearance of the towns of Berlin and Nurnberg, this activity had nothing at all to do with any crime against the peace; on the contrary, his activity was rather to be regarded as a prevention of war preparations, as this task of his required raw materials and equipment to a very great extent, from which rearmament might otherwise have benefited directly or indirectly. The construction projects assigned to Speer were, moreover, calculated and planned far ahead. They could only cause the impression in Speer that Hitler reckoned with a long period of peace. It is, therefore, out of the question for the defendant prior to his assumption of office as Reich Minister to have contributed directly or indirectly to the realization of facts, which are characterized by par. 6a of the Statute as crimes against peace.

The fact too that the defendant was a member of the Reichstag from 1941 cannot be quoted in support by the Prosecution, because as the Prosecution itself pointed out, the Reichstag in the authoritarian regime has sunk to complete insignificance and had become merely an institution that accepted and applauded the Fuehrer's decisions. In this respect also responsibility for the guilt of war is out of the question for no activity whatever of the Reichstag is recognizable in extension of the war to the Soviet Union and the United States.

The special French Prosecution, therefore, justly desisted from reproaching the defendant with an offense against par. 6a of the Statute.

The Prosecution further charges defendant Speer with having participated during his term of office through the fact that workers were transferred against their will from the occupied countries to Germany where they were employed for the purpose of the conduct of war or production of war material. It should be said in this connection:

The Prosecution reproaches the defendant with violations of paragraph 52 of the Hague Convention on Land Warfare insofar as according to this convention services can be demanded of nationals of the occupied country only for the necessities of the occupation army; moreover, they have to be in proportion to the resources of the country and must not imply the obligation of the persons concerned to take part in military actions against their native land. The Hague Convention on Land Warfare establishes in paragraph 2 that all countries participating in the war in question must have joined it (General participation clause). The Soviet Union not having entered into the Convention on Land Warfare, the latter could be applicable to the conditions created by the war against the Soviet Union only if the legal principles laid down in the Convention could be considered as universally valid international law. Above all we have, therefore, to start from the principle that a different legal judgment has to be applied to those areas belonging to states that were partners of the Hague Convention on Land Warfare, and for such areas whose states are not to be regarded as treaty partners.

In examining the question, the point is to be determined whether deportation of laborers from territories occupied in wartime by an enemy power can be justified in virtue of Article 52 of the HLO. Article 52 constitutes a limitation of Article 46 of the HLO, inasmuch as the principle is stipulated that fundamentally the population of occupied territories and their property are to be involved as little as the necessities of war will allow. Starting from this principle, it is now necessary to examine whether, in virtue of it, a deportation for the purpose of securing labor potential for the essential war economy of a belligerent country is prohibited to any extent. In this respect, the question must be considered, and it makes a difference whether the deportation carried out by the occupying belligerent State is in accordance with conventions agreed upon with the Government of the country occupied by the belligerent State. The Prosecution has defended the view that such conventions are legally void because they were made under the constraint of occupation, and because the Government existing in France during the time of occupation could not be considered as representative of the French Nation.

The first point of view cannot support the contention of the Prosecution. International juridical conventions will always be influenced in their contents by the respective centers of gravity of the contracting parties. In every peace treaty concluded between a victor and a vanquished State, this proportion of centers of gravity will be reflected in the contents. This is not, however, contrary to the nature of treaties.

The second point, in virtue of which the Prosecution rejects the plea of an agreement between the German and existing French government relative to the assignment of labor potential, is equally ineffectual. The so-called Vichy Government existing at the time was the only Government existing in French metropolitan territory; it was the lawful successor of the government in office before the occupation, and internationally acknowledged by the fact that states then not yet involved in the war preserved diplomatic relations with it.

Moreover, it cannot be taken for granted that the disposition manifested in the conventions by the French Government to cooperate with the then victorious German Reich was in contradiction to the genuine popular opinion of the French Nation. Reference can be made in this respect to Document R–124, page 34 of my Document Book. Particular attention must be given here to the economical situation of occupied France at the time. After France's withdrawal from hostilities, the whole of French metropolitan territory was included in the total blockade, with the result that those raw materials not home produced were no longer forthcoming, and production came to a standstill. Thus, a considerable proportion of the French productive potential was put out of action and a number of workers deprived of a living. Moreover, the French Government did not pledge itself to an unreserved dispatch of labor potential to Germany, but subordinated this to compensational provisions such as the liberation of prisoners of war, etc.

Whether, and in what measure, the expectations which conditioned the conclusion of the convention by the French Government were actually fulfilled is immaterial to the matter of determining whether the conventions in question were authentic treaties or not. That these agreements have the character of a treaty cannot be juridically doubted. In virtue of them, the accusation of the Prosecution that the removal of workers from the occupied French territories was carried out against their will and therefore illegally can have no justification. Agreements such as those concluded between the German and French Governmental departments cannot be introduced as a criterion for the judgment of the legal background relative to the workers from Belgium and Holland, since in those countries the Government had deserted and consequently there was no existent political authority. The remaining General Secretaries of the Government could not be considered as Government representative and the decrees, in virtue of which the dispatch of workers to Germany was carried out, were enacted on the directive of the Reich Commissioner in the person of the military Commander-in-Chief.

That particular rules must apply to those countries and to the dispatch of laborers effected by them has already been explained by Dr. Steinbauer in his exposition concerning the activity of defendant Seyss-Inquart in Holland. To avoid repetition, I refer you to these explanations.

Where the Eastern countries are concerned, we must start from the principle that the Soviet Union did not become a contracting party to the HLO. It remains, however, to be examined whether the principle set down in Article 46 of the HLO with reference to the treatment of civilians in war, and in the case of occupation of a belligerent country by the enemy, is not to be considered as a universally valid international law and therefore applicable even if the belligerent country concerned is not specifically party to the HLO. On examination of this question, the deportation of workers from occupied territories would prove to be illegal, which means that a particular circumstance must come up to cancel this illegality.

The case of emergency stipulated by international law can be considered as one such circumstance. Of course, the theory international law is controversial as to whether and in what measure such an emergency can legalize an intrinsically illegitimate practice, but the admissibility of such an emergency must be envisaged in those cases when the State is fighting for its bare existence.

After the unconditional capitulation of Germany had been made the declared goal of the Allies, such a state of emergency was to be considered by the German State as having arisen, since there remained no doubt but that it was the intention of the enemy to destroy the German State to its very foundations.

Indeed, this emergency can be considered to have been already existent at an earlier stage, after it had become clear that the war had ceased to be, as conceived by the Hague Convention of Land Warfare, a settlement of differences between two States, and become a war in which it was sought not only to strike at the fighting forces of the belligerents but primarily the economic forces of the belligerent Nations and thereby what is termed as their war potential. The HLO rests upon a conception of war which was overwhelmed in the first World War and much more so in the second World War. If in the first World War the belligerents sought to strike at each other's economy by blockade and counter-blockade, in the second World War they have moreover, in addition to the more indirect effect of blockade, introduced direct damaging action against the enemy by the destruction of its production installations by means of aerial war. Against the conception of war at the base of the HLO, a complete change has come about. In view of the consideration that a country can only resist a technically well equipped adversary if it has, itself, at its disposal a potential of uninterrupted production, the object of this war was primarily to destroy this productive potential of the adversary. This was the aim of the British blockade, not only of Germany but of every country in the German sphere of influence. Dr. Kranzbuehler has already discussed the questions related to this subject. Reference can be made to his statement as far as it is concerned.

Accordingly, aerial war was primarily waged, not only to include the regions belonging to the German national territory but also to destroy the production potential and possibilities existing in the occupied territories. Aerial war with continuous air raids was directed against economic targets in France, Belgium, and Holland, the Czech Territories, Poland, Austria, and had as its further aim the interruption and putting out of action of the whole communications system, not only on the front and its immediate rear but hundreds of kilometers behind it, with the purpose of paralyzing the adversary's vital functions. The air offensive of the Allies against Japan is particularly clearly indicative of this. This war overlapped the bounds of the HLO. It does not make any more difference between the national territory of the adversary and the occupied territories which are likewise included in the enemy blockade. In this war, which made it its purpose to destroy not only the national existence but the economic productive capacity of the adversary, one can speak of a real national emergency. When defendant Speer was appointed Minister, the economic war we have just described was in full swing on either side. It was indeed the task of Speer's department to solve just the production problems resulting from it. Thus, Speer was placed in the middle of this economic war. It must be further examined whether and to what extent the measures taken on the German side were expedient in remedying the state of emergency.

In the course of the trial, the Prosecution had claimed on several occasions that the imported labor was intended to be used as labor for service at the front. This is certainly one of the points of view which induced Germany to resort to foreign workers, but it is by no means the only valid, not even indeed the overwhelmingly decisive, point of view. It is a fact that the total blockade of the German Reich carried out by the adversary compelled the Reich to an increasing extent to build plants for the production of substitutes in order to carry on the war in its now definitely technical form. It is another fact that the disturbances of economic life caused by aerial warfare made it necessary to resort to an increasing use of labor. Merely as an example, allow me to mention how much additional labor was necessary for the repair of air raid damage. This situation involved a state of emergency, inasmuch as the pursuit of a war of self-preservation would not have been possible without the erection of such additional production plants.

Should it be contended that there is no point in speaking of an emergency cancelling the illegality of the proceedings since the War was begun as a war of aggression and was therefore illegal from the outset, the answer is that, as far as defendant Speer is concerned, this much may be said in his favor, that he believed in the existence of such a state of emergency and had reason to do so. The examination of evidence has revealed that the backgrounds of the origin of the war, so far as they have been exposed here by the Prosecution, were not known to most of the defendants, but least of all to defendant Speer.

Insofar as the deportation of foreign workers to the Reich constitutes an objectively illegal measure according to international law, it remains to be examined what share of it can be charged to Speer. At his interrogation, prior to the beginning of the Trial on 18 October 1945, defendant Speer has admitted having known that, at least as far back as September 1942, foreign workers had ceased to come voluntarily to the Reich. He said he had countenanced the compulsory measure because there was no other possibility of meeting the labor requirements in a different way. It must be concluded from this declaration that the defendant was convinced of the necessity of this emergency measure. Subjectively, it must therefore be considered in his favor that he believed in the existence of such a state of emergency excluding illegality. But in the first place it must be examined, as to what extent defendant Speer has actually contributed to the institution of deportations to Germany. In this respect, we must start from the principle that defendant Speer had a purely technical task which he has sufficiently described in his evidence. Reference can be made thereto. For the fulfilment of his task, he stated his labor requirements. How these requirements were met has been told in detail by witnesses Schieber and Schmel. Requirements were submitted as a whole and it was incumbent upon defendant Sauckel to satisfy them.

These requirements included the totality of labor required, and it was the co-defendant Sauckel's task to meet these requirements according to possibilities and to his best judgment. It was for him to carry out an exhaustive round-up of domestic labor potential as well as the procurement of foreign labor. That defendant Speer made it a point to procure German labor in the first place for the tasks to be carried out by him and for which he was commissioned by the Government has been told by witnesses Schieber and Kehrl (*Doc. Book II, Pages 109, 115, 117, 118, 129*) at their interrogation. That the satisfaction of his labor demands for the achievement of his task, the increase of armament production, was admittedly of considerable though not decisive importance is evidence by the testimony of witness Saur (*Doc. Book II*) according to which an increase of 4 to 4.9. million workers was achieved for the armament finishing industry (for the whole armament industry) during the defendant's activity as Armament Minister, while the production of armament parts increased in the proportion of 5½ and up to 7 in many departments. It must therefore be born in mind that the increase of armament production incumbent upon defendant Speer was primarily achieved, not through increase of labor potential, but thanks to technical and organizational measures. It must be once more inferred from this that, for the defendant, procurement of labor potential was admitted an important though not the decisive element in the carrying out of the task assigned to him. The defendant has quite plausibly stated that he had demanded workers from Sauckel but that he had insisted upon having German workers first of all. In the defendant's opinion, the increase of labor potential in the economic sector controlled by him could have been achieved without resorting to foreign labor to the extent in which it was done. The measures taken by the defendant for the purpose of preventing the deportation of workers from the West into the Reich have been adequately described by the evidence. In taking those measures, namely the removal of consumer goods production and manufacture of vital armament parts such as, for instance, forged parts, railway equipment, etc., to the Western countries and installation of protected industries there, Speer was actuated by the knowledge that the conscription of workers from France as well as from Belgium would be stopped. The consequence of his talks with the French Minister Bichelonne was, as the defendant explained at his interrogation, practically the end of the deportation of workers to Germany. The results have been accurately described by the General Labor Commissioner at the session of the Central Planning Board on 1 March 1944 (*bf. p. 32/33 Speer Doc. Book*). In spite of every resistance opposed to this policy (*Cf. Sauckel's letter to Hitler dated 17 March 1944, Doc. 3819–PS*) Speer persevered in his purpose. The report of Hitler's conference on 4 January 1944 submitted by the Prosecution under 556–PS shows too, by the decision adopted, that the protected industries, the abolition of which Sauckel tried to obtain, were to remain inaccessible to seizure by Sauckel's labour conscription. *(Compare also Speer Exhibit 10, page 26.)* Speer wanted to employ French workers in France in the effort to transfer production of consumer goods and products which did not represent arms production to the occupied Western territories. He wished to utilize for armament production the German workers made available through the closing down of German plants. *(Doc. R–124, pp 33/34 of Speer document book)*. In this manner he was able to increase production, because German workers as a result of elimination of language difficulties could more easily be retained and because food difficulties were eliminated. *(Compare Kehrl, page 110, Speer document book, answer to question 9.)*

The result of this policy was that the workers of the Western areas were preponderantly used in the production of civilian goods, but not in armament production.

On the question of employment of foreign labor in the protected industries it must also be said, the statute is derived from two factual circumstances—deportation for forced labor and forced labor itself. Compulsory labor in France was ordered through a decree of the French Government. According to international law there could be no objection to this, unless one would take the position that the French Government was not entitled to take such measures and issue such decrees. As was deposed by defendant Speer, French economic leadership obtained its independence through the agreement with Bichelonne, naturally with the restrictions which resulted from the agreement. As established by Bercks (*Doc. book I, p. 381*), co-worker of defendant Sauckel, from the protected industries of France 20% went to French economy, on the other hand more than

40% went from consumer goods industry into French hands. This shows that the French armaments industry did not manufacture weapons and direct implements of war, for the German authorities would surely not have left them to the French offices.

If in the session of 20 June 1946 the Tribunal summarized its misgivings as to the manner in which we presented our evidence, to the effect that purposeful questions were irrelevant, then the viewpoint of the defense on the contrary may be established that this speech is only for the purpose of clarifying the question of legality.

If the French Government was justified in decreeing compulsory labor service and if plants, employing French workers on the basis of this decree or on the basis of voluntary labor contracts, were provided with orders on German accounts, no legal objection could be raised. The establishment of protected industries which hindered withdrawal of laborers and their transfer to Germany, and the removal of some individual branches of production to France, Belgium, and Holland led to the objective of satisfying the requirements of German Economy in a legally unobjectionable manner. Although defendant Speer did not completely check the transfer of workers, he nevertheless did succeed in decreasing their commitment appreciably. Instead of the policy of transplanting foreign workers to the Reich, which was pursued by other Reich offices, the defendant pursued the objective of committing the labor for his purposes in their homeland. *(Speer Exhibit 9, p. 24 and Speer Exhibit 11, p. 27 of the Speer document book.)* To this extent he worked against the tendency of deporting workers from their homeland.

In order to prove the assertion that Speer had decisively participated in the intensification of deportation for forced labor, the Prosecution refers to Document 556–PS which represents a file memo by Sauckel concerning a telephone conversation with Speer on 5 January 1943. In contrast to this, the copy of the Fuehrer protocol of 3 to 5 January 43, which was the object of the telephone conversation, has been submitted. Even if here also sharp remarks by Hitler are repeated it nevertheless does not reveal the tendency which was noted by Sauckel in his file memo. The defendant Speer was already at that time on bad terms with Sauckel. The order issued to Speer in this Fuehrer protocol for the management of the French armament industry gave him a pretext for the establishment of protected industries. The termination of labor commitment from France was thereby accomplished, consequently therefore, the opposite of what the prosecution would like to prove. Reference must be made hereby to Document book RF 22. There it is confirmed that due to the Speer-Bichelonne agreement, labor commitment to Germany as of October 1943 had been decreased about 1/10. *(Compare p. 41 Speer Document book.)*

In weighing the question as to what extent this exonerates the defendant, it is of no importance whether he acted in such a way for reasons of expediency or because he considered the other procedure as illegal. What solely matters in this case is the success which actually brought to an essential standstill the transfer of labor forces to Germany, as evident from the Document quoted RF 22. It is finally evident from the Fuehrer Protocol of 19/22 June 1944, Speer Exhibit 12, page 19 of Document Book Speer, and the testimony of Seyss-Inquart (11 June 46) that in spite of the loss of industry in the Western territories and the intent of other departments to bring the unemployed workers to Germany, Speer carried through the maintenance of his protected industries, and that the plan of further commitment of foreign workers in Germany collapsed definitely. The duty to examine the measures of Sauckel as to their international legal admissibility cannot be invoked in the case of the defendant Sauckel and this for the following reasons:

When he took over his post in the year 1942, the transfer of foreign labor to Reich Territory had already been practiced for some time. He relied on the assumption that the legal foundations for these measures had been examined before their introduction. He did not have the legal duty of examining independently the legal basis; he could rely on the assumption that the offices handling labor commitment had examined the legal basis of their activity. He had it confirmed to him repeatedly by the Plenipotentiary for Labor in the course of his activity that the transfer of labor to the Reich was carried out strictly within legal limits. He could rely on it that the authorities charged by the State direction with the tasks of procurement of labor would on their part examine the measures carried out by them for the execution of these tasks as to their legal admissibility. The activity of the defendant within the framework of the State direction could, if transferred to civil law, be compared with that of the technical works manager of a factory, where Sauckel's position would correspond to that of a director of the personnel office. In such a case the technical works manager's duty is not to examine if and to what extent the employment contracts concluded with the individual workers conform to legal regulations. He has only to see to it that the labor forces put at his disposal to carry out his tasks are being employed in the right place in the right manner. This cannot be countered with the argument that the defendant Sauckel merely considered himself as the deputy of the defendant Speer. This would not present a just picture of the distribution of tasks between the two co-defendants as carried out by the State direction. The fact cannot be overlooked that of all the sectors which put in their requisitions to the defendant Sauckel, the ones presented by the defendant Speer were the most important for the conduct of the war, and therefore had priority over the others. This does not mean, however, that it was Sauckel's duty to satisfy absolutely all the demands of the sector represented by Speer before all the others. He did not do this, as evident from the collective evidence, particularly the testimonies of the witnesses Schieber (*Doc. book II, p. 114*) and Kehrl (*Doc. book I, p. 106*), and could not even do this, as the demands of the other sectors, which were all designated as "Bedarfstraeger" (users), were very often equally urgent, and the labor potential at hand was not sufficient to fill all the demands equally. Had Sauckel not been more than a "deputy of Speer", a tool who had only to carry out the instructions of Speer the profound differences between the two could never have come into existence.

It has been emphasized by the Prosecution that the appointment of the defendant Sauckel as Plenipotentiary for Labor was made possible through the intervention of the defendant Speer, and that this gave reason to believe that Sauckel had been more or less a tool of the defendant Speer, or depended on him to a large extent. This assumption does not correspond with the facts.

When he assumed his functions as Armament Minister, the defendant Speer discovered that the procurement of labor for the plants which had up to then been carried out by the Ministry of Labor could not fill the demands made on them. This activity represented, within the frame-work of the Ministry of Labor, only a small fraction of its overall functions.

The defendant Speer declared in the course of his interrogation that the Ministry of Labor could not overcome sufficiently the tendencies of the Gauleiters in the various "Gaue" (districts), because every Gauleiter had the ambition to prevent the transfer of workers from his Gau to another to the best of his ability. The department of the Ministry of Labor, with its pure red-tape, did not appear to be capable of this task, and the suggestion was made to the State direction to charge a Gauleiter with this mission. The demand connected with this suggestion of Speer, namely to put the Gauleiter charged with the procurement of labor under him, was not granted by the State direction, and this because of other existing competencies. The person proposed by Speer was also turned down, and the defendant Sauckel appointed instead. Therefore only organizational reasons were involved in Speer's endeavors to create a Plenipotentiary of Labor, the purpose of which consisted in overcoming the above-mentioned opposition directed against the activity of the Labor Procurement Office of the Ministry of Labor. To draw from these facts the conclusion that the defendant Speer was responsible for all the measures ordered by the defendant Sauckel would be erroneous.

The fact that the defendant participated in the sessions as a member of the Central Planning Board, in the course of which the problem of the Procurement of Labor was discussed, cannot be used to support the claim of the Prosecution. The Prosecution attempts to prove, as a result of the session of the Central Planning Board, that the defendant Speer had played a leading part in the procurement of labor from foreign countries. To counter this the following must be stated: The Prosecution has only submitted the texts of the Minutes of the Central Planning Board i.e., the Minutes which were taken down regarding the course of the session, but not the decisions which were made on the basis of this session. These are, however, decisive.

As, however, all the defendant Speer's reports include also resolutions of the Central Planning Board and contain notes placed at the disposal of the Allied authorities, it would have been easy for the Prosecution to present such conclusions, from which a decisive cooperation of the defendant in the procurement of labor could be deduced. Such conclusions do not exist, however, and cannot therefore be drawn from the fact that at the conferences of the Central Planning Board questions of labor mobilization were mentioned which the Central Planning Board had taken over in its sphere of activity. The decree regarding the establishment of the Central Planning Board is given in Speer Exhibit 7 under 42. In it the labor sphere of the Central Planning Board is firmly outlined. The procurement and distribution of labor should not be included in the sphere of competence of the Central Planning Board as the new office was created just for that purpose. It follows also from the testimony that—when the co-defendant Sauckel discussed fully the question of policy of labor commitment before the Central Planning Board—he underlined sharply his independence of the Central Planning Board and laid weight thereon that his decisions are accountable only to the Fuehrer in the last instance. For this I refer to the testimonies of the witness Kehrl and the witness Schieber (*Speer Exh. 36, 37*). Nothing contradicts the fact that attempts were made in the Central Planning Board to influence the sphere of activity of the General-Plenipotentiary for Labour. These attempts, however, did not lead to any results.

In principle it results that the responsibility of the defendant Speer for the transportation of labor from the occupied territories to the Reich cannot be deduced from his activity within the framework of the Central Planning Board.

If the Prosecution charges the defendant with having known that a great portion of the workmen made available to him by Sauckel were brought to Germany against their will and that he used these workmen in the industry under his supervision, this conclusion encounters legal criticism. If and insofar as the removal of labor to the Reich was a violation of international law, such crime would be terminated with the removal of labor to the Reich. The fact that the persons removed into Reich territory were assigned for work establishes, legally speaking, a new set of facts to which the Prosecution applies the concept of "slave labor". In this connection the following should be considered: By reason of the Reich Compensation Law and the enactment decree there existed for every German a liability to make his services available for war purposes. Through the Labor Office as highest instance, the State leadership could dispose of the labor of every State national for any purpose it deemed appropriate, and it has done so. Foreign workers who were removed to Germany became likewise subject to this regulation. There is no attempt made on our part to deny that no provision is found in Hague Convention for Land Warfare itself which would support labor compulsion in force for German nationals to be extended to inhabitants of the occupied territories. Since HLO reflects the influence of a different concept of warfare, it could not yet take conditions into consideration which were brought on by economic warfare. Yet it is not possible to answer affirmatively the question whether HLO conclusively regulates the summariness of all powers incumbent upon an occupation authority. An affirmation is contradicted by the practice of all nations who participated in this war. But in this respect also the angle of the above-mentioned State emergency situation can be resorted to for a correct evaluation and appreciation of the case. It should be admitted that the Prosecution is right in that this extension of labor liability can be justified from that point of view only.

Assuming the Prosecution's contention of a lack of legal justification for the extension of labor liability to foreign nationals of occupied territories, there remains the need for checking the extent to which culpability could be claimed for the defendant Speer because of the employment of labor held under such compulsion. That the defendant Speer, although he was not responsible for this, still attempted to facilitate the living conditions of these workers and that he has also helped to correct bad conditions—insofar as these came to his attention—is shown by Exhibits 3, 4 and 5 of the Speer document book (pp. 7, 8, 9, of the Doc. book). Reference should also be made to the testimony of the defendant himself in direct examination as well as in cross-examination when he described his activity in that field.

Justice Jackson, the American Chief Prosecutor, when placing before the defendant Speer during his cross-examination a series of documents, purportedly to prove the bad treatment of foreign workers by the firm of Krupp in Essen, himself stated that he does not hold the defendant Speer responsible for such individual incidents.

The documents involved were the affidavit of Dr. Jaeger (*Doc. D–288*), discussed by Dr. Servatius; a letter of the Locomotive Manufacturing Department of the firm of Krupp, dated February 1942, just after the defendant Speer had taken office as Reich Minister. Conditions as described therein had called for Speer's intervention with Hitler in March 1942 (*Speer Exhibit 3, p. 7 of Doc. Book Speer*). Another document also submitted, Document D–321, describes conditions as they prevailed when Russian laborers came to Essen in 1941, in other words, before the defendant Speer took office. Document D–258, USA Exhibit 896, which came up during cross-examination was not produced as proof of charge against the defendant, as stated by Justice Jackson. Further documents then submitted all deal with incidents in the Krupp Works. To the extent to which he was able to do so, the defendant explained all of them. These documents show that improper conditions of a general nature for which the firm of Krupp might be held responsible resulted from the effects of air bombardment and demolition of living quarters incidental thereto. But even if the incidents cited should have actually occurred with that firm—which the defense is not in a position to verify—these incidents would not supply adequate ground for the assumption that the conditions under which foreign laborers worked in armament industries were uniformly the same. Picking out only one firm and examining it does not permit the drawing of conclusions as to a whole system. But only findings covering the system as such would yield evidence.

It is true that this activity of the defendant Speer would not essentially influence criminal evaluation of his actions in principle, but it would be of decisive import in establishing the measure of his participation.

When the defendant took office, the practice of employing foreign labor and prisoners of war was already in existence; it is not he who introduced it. Thus he should not be considered as the originator, which may likewise deserve to be taken into account for the establishment of judgment, since it did not seem possible to abrogate the practice after its establishment. The employment of foreign labor in German economy was not something unusual. In peace times also a great number of foreign laborers were employed in agriculture, in mining, in surface, and in underground workings.

During the war foreign laborers from the East as well as from the West had already been brought to Germany to a considerable extent, even before the defendant Speer took office, and only a portion of them belonged to the sector under Speer's control.

In order to divide off the spheres of jurisdiction of the two defendants, Sauckel and Speer, how assignment and distribution of workers into the establishments most recently under the control of the defendant Speer was handled will be described below. Acting in behalf of the Speer Ministry, commissions and pools assigned to the individual establishments certain production tasks as part of the armament program. The factory then figured out the number of workers needed. This was reported to the Armament Command and at the same time also to the Labor Office where labor requirements of all works were recorded. The Armament Commands examined all requests for workers received from all works under their jurisdiction and passed them on to the Armament Inspection Offices. Labor requirements reported to Labor Offices were forwarded by them to the Gau Labor Offices. Armament Inspection Offices collected the requests and forwarded them to the Speer Ministry, Labor Mobilization Division. The Gau Labor Offices directed applications which they received to the General Commissioner for the Commitment of Labor (Gb.Arb.). In this connection it is noteworthy that in 1942 the Speer Ministry controlled only construction work and Army armament. Navy and Air armament handled their requests for labor independently. In the spring of 1943 Navy armament was assigned to the Speer Ministry; from then on Navy handled its labor requisitions by way of the Labor Commitment Division; in the fall of 1943 the rest of production was added while Aircraft armament continued to handle its requisitions independently through the General Commissioner for the Mobilization of Labor until August 1944.

An account of these details is indispensable in order to show that the Prosecution's assumption, according to which Speer is seen as the main beneficiary of Sauckel's mobilization of labor, can be disproved. Incidentally, it is mentioned that alongside of the Speer Ministry there existed essential industries and agencies of equal importance, for instance the Wehrmacht Administration, the Transport System, and so forth; this has also been confirmed by the testimony of witnesses. The General Commissioner for the Commitment of Labor (Gb.Arb.) distributed the labor at his disposal among the various essential industries and agencies, assigned the required labor to the Gau Labor Offices who, in turn, referred them to the local labor offices where allotment of individual laborers to the individual establishments was handled, on the strength of applications which had undergone examination through the branches of the Armament Offices. Exceptions to this cumbersome type of procedure were possible through the introduction of the so-called "red-slip process" which was applied in the case of exceptionally urgent production assignments (*Speer Exhibit 37, p. 122 of Doc. Book*). A certain number of red slips were made available monthly by the General Commissioner for the Commitment of Labor to the Armaments Ministry, for distribution by the latter to the individual industrial works under its supervision by way of the industries self-administration agencies. The individual factory then presented these red slips to the Labor Office, and these requests for workers covered by red slips were acted upon without regard for the requirements of other essential industries and agencies, and not until then could allotment of labor be made to other establishments. In all instances where normal requests for labor are involved, allotting was exclusively in the hands of labor authorities under direction of the defendant Sauckel, so that neither the individual factory nor the offices of the defendant Speer nor the latter himself had any influence on the distribution. The question whether local labor or foreign labor or prisoners of war were used to satisfy requisitions was left for the Labor Authorities to decide (*Doc. Book II, pp. 108, 109*).

In concluding the presentation of evidence, the Prosecution submitted the decree of 1 December 1942 (*Doc. 4006–PS*), issued jointly by Speer and Sauckel. The Prosecution contends that this document and the decree of 22 June 1944, simultaneously submitted, furnish a basis for appraisal of the power ratios between Speer and Sauckel. Therefore, some comment on this is appropriate.

From the decree of 1 December 1942 it is clear beyond doubt that the General Commissioner for the Commitment of Labor was authorized to examine requests for labor to the extent to which they came from the armaments industry. If then a case arose that a factory asked for the additional laborers required to carry out the production job assigned to it, the General Commissioner for the Commitment of Labor reserved to himself the right of examination as to its necessity. The intention was to make the individual factory exert the greatest possible economy in the use of labor within its own works. Another purpose of these commissions was to establish the extent to which an establishment might be in a position to spare of its own labor for work in other plants, without impairing the task assigned to it. It was the task of the Armaments Ministry and of the agencies under its authority to determine the priority range in the consideration of requests for labor received by establishments under its jurisdiction. They also had to determine which of the plants were in a position to make workers available to other plants whenever both made the same product for the same Wehrmacht requirements. As an example, supposing the supply program to be modified for a plant manufacturing vehicle supplying articles, it was left to the Armaments Commands to decide whether the labor power thus set free should be assigned to another factory in the same line of production. In general, the allotment of labor remained in the hand of the General Commissioner for the Commitment of Labor. The agencies of Speer's Ministry were merely concerned with directing the labor already available to these branches of industry as assigned to these establishments through the General Commissioner for the Commitment of Labor.

The procurement of other labor was now, as before, in the hands of the Plenipotentiary General for Labor, and furthermore the Plenipotentiary-General for Labor participated authoritatively in the examination of the question as to what extent plants could release labor in order to make it available to others. (Combing-out action.) The authority of the Plenipotentiary General for Labor was therefore not limited to any extent through this mutual agreement between him and the Reich Minister for Armament and War Production. His task was merely now as before to procure labor for the plants, he was even given a considerable amount of authority in labor questions, to look over the armament plants subordinated to the defendant Speer and to examine if and to what extent these plants could make labor available for other plants. The decree of 22 June 1944 ordered that labor which was already available was to be used in accordance with directives of the Central Authorities or according to the orders of the Chairman of the Armament Commission. It must also be noted in this respect that it was not a matter of using new labor unskilled in armament work which, now as before, was procured through the

Plenipotentiary General for Labor, but solely so-called transfer-actions from one armament plant to the other. The Sauckel Agencies therefore could no longer, in accordance with this decree, check the demands for labor on the part of the plants subordinated to the Speer Ministry, if the Chairman of the Armament Commission had recognized these demands. This decree did not bring any change in the basic distribution of authority, according to which the Plenipotentiary General for Labor had to procure the required labor and handled the whole allocation of labor.

If the agencies of the Plenipotentiary General allocated labor on a demand for labor which had already been checked, then it was left to their decision as to what labor, if native or foreign, etc., was to be furnished. The authority of the agencies of the Minister for Armament in questions of the commitment of labor were limited to a large extent to the execution of so-called transfer-actions, i.e., assignment of labor from one armament plant to another. It would be wrong to try to conclude a considerable limitation of the authority of the Plenipotentiary General for Labor and a fundamental expansion of Speer's authority from these decrees. It would be just as wrong to conclude from this that the influence of the Armament Ministry had been increased over other authorities of the Plenipotentiary General for Labor.

In order apparently to characterize the relationship between Speer and Sauckel, the Prosecution has finally submitted a file note of General Thomas, the Director of the War Economy and Armament Division in the OKW, regarding a discussion between the defendant Speer and himself on the one hand, and the Directors of the Armament Offices of the three branches of the Wehrmacht on the other hand of 24 March 1942, in which Thomas states that the Fuehrer considered Speer as his main authority and his trustee for all economic spheres. This note can only be understood in connection with the report of the account which General Thomas gave regarding his activity as Director of the War Economy and Armament Office, and which has been presented in excerpt form to the Tribunal under the file 2353–PS. Prior to Speer's appointment as Minister for Armament, Thomas had tried to effect that the position of the General Plenipotentiary for Economy, which had been provided in the Reich Defense Law, would be expanded to an Agency which would control the whole war economy. When now the armament economy was confronted with high demands in connection with the first winter campaign in Russia and the losses which had been sustained there, and Hitler, after the death of Dr. Todt, appointed Speer to be his successor in the Ministry for Armaments and Munitions, Thomas thought to see in Speer a personality who would receive the authority which he had striven to obtain for the General Plenipotentiary for Economy. This, however, did not occur. As has been shown from the evidence, Speer only received the army equipment and the construction system. The subordination of the new agency of the Plenipotentiary General for Labor under his Ministry, for which the defendant Speer was striving, was not sanctioned by Hitler. Speer's rights as Minister for Armament are stated by the decree. The generally maintained expectations of General Thomas, which the latter had linked with Speer's appointment, were therefore not fulfilled in any way. Speer only received an increased authority when, in the year 1943, he took over industrial production from the Ministry of Economy. But even then he was still far from having the sphere of work which General Thomas had expected for Speer. Based on this expectation General Thomas thought to see in the person of Speer, the man, appointed by Hitler, who would be decisive for all economic questions. In the file note of General Thomas, which confined itself to generalities, it is a matter of an expression of opinion which was not justified by the actual state of affairs. It offers no basis for the reply to the question, how the responsibility for the policy of the commitment of labor objected to by the Prosecution can be distributed.

In summarizing it must be stated to this count of indictment—

Speer is not responsible for the means employed for the procurement of foreign labor, nor for its removal to Germany. He is at the most responsible for the utilization of part of this labor in Germany.

As a further count of indictment it has been stated that the defendant had employed prisoners-of-war in the economic sector which was under his direction, and that he had thereby violated Article 32 of the Geneva Convention of 1929 regarding the treatment of prisoners-of-war used in plants under his control; this, however, cannot be regarded simply as a violation against Article 31 of the previously mentioned Agreement. The expression "armament economy" and/or "armament plant" does not have the same meaning as plant and/or economy, whose task is the manufacture of arms and direct war requirements. The term "armament plant" can only be understood from its development. When at the beginning of rearmament the limitation of raw materials began, plants which were working for rearmament were given preference in obtaining raw materials. These plants were subordinated to the armament inspections established by the Wehrmacht, and were called "armament plants". In addition to all other plants, those which served the manufacture of iron, steel and metals, as well as those plants which manufactured machine-boilers and vehicles and appliances, also the entire manufacture of raw steel and the first stage of preparation (foundries, rolling works, forges) as well as the whole remaining subsidiary supply industry were included in it. So, for example, electro-technical plants, plants which produced optical products, plants which manufactured ball-bearings, cog-wheels, etc. This is shown by the testimony of the witness Schieber. (*Exhibit 37, Question 9, Doc. Book, p. 114.*)

Approximately 30–35% only of the whole iron production was used for the production of armament to the extent as previously described, and 60% for the maintenance of production or for other consumers (Reich railroads, construction of merchant vessels, agricultural machine-export-goods, appliances for the chemical industry). We refer to the testimony of the witness Kehrl, which has been submitted under Speer Exhibit 36, and particularly to his answer to question 5. Since the iron quota assigned to the armament industry also includes the manufacture of raw steel and the stages of manufacture, it can be safely presumed that of all the plants which were combined in the armament inspections, only approximately 20–30% manufactured armament products within the meaning of the Geneva Convention. The details had to be treated individually in order to gain an idea as to what extent Article 31 of the Geneva Convention could be violated by the employment of prisoners-of-war. The Prosecution has presented an Affidavit of the American economic statistician Deuss under No. 2520–PS, in order to prove thereby how many prisoners-of-war and foreign workers were employed in the armament industry.

The compilation, which is principally supported by numbers taken from the documents in the possession of the defendant Speer, does not, however state in which branches of the armament industry the individual prisoners-of-war worked. A big enterprise, which, because it falls under one of the above-listed categories and as the result thereof was considered an armament plant in its entirety, needs only to manufacture a fraction or perhaps no weapons or equipment which stand in direct relationship to war activities. If prisoners-of-war were employed in it, then this occupation does not represent a violation of Article 31 of the Geneva Prisoner-of-War Convention. Such a plant, however, appears collectively in Deuss' Affidavit. The Affidavit thereby loses its value as evidence as to, if, and to what extent

Article 31 of the Geneva Convention was violated by the employment of prisoners-of-war in armament.

The French Prosecution has represented the point-of-view that the employment of French civilian workers who had been released from prisoner-of-war confinement and who were employed in the armament industry was also to be considered a violation against Article 31. This is not applicable. Beginning with the time of their release, the former prisoners-of-war were free people, unlimited in their freedom of movement, and only limited by the obligations embodied in the contract of employment. In addition to this no French prisoner-of-war could be forced to agree to his release with the obligation to make his labor available to German industry. It was his free decision if he preferred to accept his release as a prisoner-of-war under these conditions; from that moment on he was no longer a soldier, no longer subject to military discipline, received his working wages like every free worker, and was not subjected to any camp discipline or any other similar circumscribing regulations. To those among the prisoners-of-war who preferred to agree to their release under these circumstances, these advantages apparently appeared more valuable than the protection which they enjoyed as prisoners-of-war. If they did this then their occupation, even in work which in itself is prohibited for prisoners-of-war in accordance with Article 31, cannot be considered a violation of this Article. The employment of prisoners-of-war in the industry of the country which is holding them prisoner is not prohibited by the Geneva Prisoner-of-War Convention. Only that work is prohibited which is directly connected with military operations, for example, the use of prisoners-of-war for fortification works for the combat unit. The defendant Speer cannot be accused of anything of this kind—the manufacture and transport of weapons of all kinds as well as transportation of war materiel for the combat units. In the armament economy under the control of the defendant Speer the only thing which could be considered as a violation of the afore-mentioned rule is the manufacture of weapons and ammunition of all kinds. Such a violation, however, has so far not been proved by the Prosecution at all.

It must furthermore be examined how the assignment of prisoners-of-war to plants took place. According to the testimony of the defendant Sauckel, this was done by the War Economy officers with the Military District Commanders submitting the number of prisoners-of-war available for work to the District Employment Office, and the transfer of the prisoners-of-war to the plants then took place in the same manner as with usual labor. A difference only existed in that the camp officers—the prisoners-of-war were billeted in so-called enlisted men's camps (Stammlager)—were responsible that the directives issued by the OKW for the employment and the treatment of prisoners-of-war were complied with. It was the responsibility of these camp-officers that, in the employment of prisoners-of-war, a violation of Article 31 of the Prisoner-of-War Convention was rendered impossible. The Commitment Officers (Einsatzoffiziere) appointed by the camp commanders had constantly to control and examine the working conditions and the kind of occupation of prisoners-of-war used in armament plants, and they had to watch and see that no prohibited work was imposed on the prisoners-of-war. The defendant Keitel has given an exact description of the manner and procedure in which the control of prisoners-of-war in the home area was exercised. Documents have also been submitted which give information about the treatment of prisoners-of-war.

The prisoners-of-war who were confined in Assembly Camps (Sammellagern) were constantly examined by Camp Commitment Officers (Lagereinsatzoffiziere) to see that the employment of prisoners-of-war was in accordance with Articles 31 and 32 of the Geneva Prisoner-of-War Convention. As far as French prisoners-of-war are concerned a special competence existed in the person of Ambassador Scapini, who had to forward any probable complaints against the use of prisoner-of-war labor in violation of international law to the OKW.

Complaints of this sort by Ambassador Scapini were immediately investigated, and if they were found to be justified, improvements were made. It is of course possible that in such a large organization as the large number of French prisoners-of-war made necessary, mistakes would also occur occasionally. Measures for the correction of mistakes of this kind are after all provided by the Geneva Prisoners-of-War Convention itself in its regulations. These regulations were also effective in the last war. The representatives of the Protecting Powers have intervened against bad conditions, which had been brought to their attention on the basis of complaints, and they have also demanded and achieved their abolition. If such mistakes were recognized and reported, they were then immediately remedied. It would be incorrect to try to conclude a premeditated system from individual occurrences. The protection of prisoners-of-war which they found in the Labor Commitment Officers (Arbeitseinsatzoffiziere) even laid defendant Speer open to criticism by individual plant directors, as being too extensive.

As far as the legal relations of the defendant Speer in this respect are concerned, it must first be examined, if the employment of prisoners-of-war in the armament industry is to be fundamentally regarded as a violation of the rules of international law. After the previously mentioned statements regarding the character of the plants which were combined in the armament industry, this must be answered in the negative. Only insofar as prisoners-of-war were actually employed on the production of arms and on the production of immediate war material could we speak of a violation of Article 31. That this regulation may have been violated in individual cases will not be denied by us. If, for example, the photographs submitted by the American Prosecution show that near the front lines prisoners-of-war were used to unload munition-trains, then this doubtlessly represents a violation of the regulation of Article 31. The defendant Speer, however, cannot be accused of such incidents, as they do not fall under his competence. To conclude a violation of the regulations of the Geneva Prisoners-of-War Convention on a large scale that the employment of prisoners-of-war in the armament industry did take place is not applicable.

A further reproach of the Prosecution refers to the violation of Article 32 of the Prisoners-of-War Agreement, according to which prisoners of war were employed in unhealthy work, insofar as prisoners of war had been employed in mines. For this a reference is made to the minutes of a Central Planning meeting where the employment of Russian prisoners-of-war in mines is discussed. The employment of prisoners-of-war in mines is not to be considered as forbidden in itself, and it has been practiced in all industrial nations. The employment of Russian prisoners of war in mines is, therefore, not to be objected to, insofar as the prisoners concerned were in a physical condition that enabled them to do heavy mining work. It has not been established here and proved by the Prosecution, that these prisoners-of-war were not physically fit for the work given them. From the fact that the employment of prisoners-of-war in mines was discussed and approved, it cannot be concluded that Article 32 of the Prisoners-of-War Agreement was violated. The treatment of prisoners-of-war has to be examined legally from various points of view. The German Government has taken the point of view that Soviet prisoners-of-war should be treated on a different legal basis than the subjects of the Western States, who were all parties to the treaty of the Geneva Prisoners-of-War Convention of 1929, whereas the Soviet Union had not signed this agreement. The Soviet Prosecution has presented Document EC–338, USSR 356, an investigation according to international law of the Foreign

Counter-Intelligence Office (Amt Ausland/Abwehr) in the High Command of the Wehrmacht, concerning the legality of the regulations issued on the treatment of Soviet prisoners-of-war, and levelled sharp criticism at the latter. The essential point is that in this report the view is expressed that, as a matter of fundamental principle, Soviet prisoners of war cannot be treated according to the rules of the Geneva Prisoners-of-War Agreement, because the Soviet Union did not participate in this, and that this report refers to the decree of the Soviet Union of 1 July 1941 concerning the treatment of prisoners-of-war, concerning which the opinion of the High Command of the Wehrmacht, Foreign Counter-Intelligence, establishes that on essential points it agrees with the rules of the Geneva Prisoners-of-War Agreement. It is, however, characteristic that in this decree it is ordered that noncommissioned officers and enlisted men taken prisoners of war may be put to work for industry and agriculture, inside the camp or outside, and that the only restriction is that the use of prisoner-of-war labor is forbidden (a) in the combat area, (b) for personal needs of the administration, as well as the needs of other prisoners-of-war (Orderlies). An order restricting the use of prisoner-of-war labor according to Article 31 and 32 of the Geneva Prisoner-of-War Agreement is not to be understood from the above-mentioned command. It now remains to investigate whether the stipulations of Article 31 and 32 of the Geneva Prisoners-of-War Agreement flow from general rules of international law, which should be observed, even if there were no special ruling by treaty, such as the Geneva POW agreement represents. This cannot generally be affirmed. The above-mentioned treaty regulations cannot be regarded as the prescription by treaty of a generally valid legal concept, if so important a member of the family of international law as the Soviet Union does not accept a ruling of this sort. Proceeding from this idea, the employment of Soviet POW in work that was not forbidden by Article 31 of the POW Agreement is not to be objected to. The Italian military persons interned in Germany after Italy's fall do not come under the regulations of the Geneva POW agreement since no state of war existed between Germany and Italy. Moreover, these military internees did not come under the restrictions of Article 31 in their employment as manpower. It must, however, be pointed out that these military internees are comprised in the enumeration by Mr. Deuss of POWs occupied in the armament industry.

In conclusion, the following is to be said on this point—

The procurement of prisoners-of-war for the factories was effected exclusively through the offices of the General Plenipotentiary for Labor Commitment. The control of the proper allocation in accordance with the POW agreement depended on the Labor Commitment Officer of the Stalag, who in return was himself finally responsible to the General for POW matters at the Army High Command. It was not possible for the defendant Speer to have any influence on the distribution of prisoners-of-war and their occupation. The Prosecution has not been in a position to bring any proof from which the participation of defendant Speer to unlawful occupation of prisoners-of-war might be deduced. These assertions of the Prosecution have remained unproved.

The Prosecution has now further brought against the defendant, the charge that the Todt Organization, at the head of which Speer was placed in February 1942 after Dr. Todt's death, had used native workers to build fortifications in the French coastal areas. As far as the Todt Organization is concerned, it is a purely civilian institution of the General Construction Inspector for road maintenance. It worked on a private economical basis, that is, that it gave out the construction work that it intended to carry out to private firms, also to foreign firms, which were established in the respective countries, and merely supervised the execution of the constructions. The private firms could undertake the procurement of the necessary materials and labor themselves. For the very reason that native construction enterprises were used it was possible to eliminate the difficulties which otherwise would have opposed themselves to the execution of the work. The workyards of the Todt Organization enjoyed a certain favor with the natives because the workmen had the assurance that they could not be compelled to go to Germany to work in industry there, because these places of construction were considered as urgently important. The workers went voluntarily to the firms which were active for the Todt Organization to obtain this security. The example quoted by the defendant Speer during cross-examination of 50,000 Todt Organization workers who were once taken from France to Germany to repair damages caused to two West German valley dams by air attacks made such a bad impression on the workers employed in other Todt Organization construction sites that there was nothing else left to do but to send these 50,000 workers back to France. In the meantime, many workmen of the Todt Organization construction sites in France disappeared, because they feared to be taken to Germany sooner or later against their will, while up to then they had regarded employment in enterprises which worked for the Todt Organization as insurance against an eventual transfer to Germany. Only the return of the above-mentioned 50,000 workers to France, which was brought about by the defendant Speer when these unfavorable consequences developed, restored the hitherto existing state of confidence. Here also the reason should be emphasized that the fact results from the event described that the Todt Organization workers were free to go where they wished; in any case, that no coercion was used against them. The consequence of this was that when the protected plants (Sperrbetriebe) were established in France, all enterprises working for the Todt Organization were declared protected plants and therewith removed from the possibility of being employed on other work. This instance shows that the view of the Prosecution that the workers of the Todt Organization were forced into the Todt Organization plants against their will is a wrong interpretation.

As it is established that the French government agreed to the use of French workers in construction sites under administration of the Todt Organization, as well as in any other armament industries in Germany and occupied territories, every illegality is excluded. It should not be left unmentioned here, that after the conclusion of the Armistice Agreement with France the latter had no more part in military hostilities. The Armistice Treaty certainly did not mean an agreement for a truce but de facto, a final stopping of hostilities, and served as a preparation for the conclusion of peace. It was a situation, which no longer signified war, but also did not yet mean the definite return to peacetime conditions, regulated by treaty. A resumption of hostilities was, however, according to both partners to the armistice, completely out of the question. The armistice was to regulate exclusively the situation until the definite conclusion of peace. Prescriptions of the Hague Convention, as well as of the POW Agreement, concern the restriction that performance of services cannot be allowed to violate the loyalty towards one's own country, which is still fighting, because the country is no longer at war. After a general armistice, the production of arms and munitions can no longer be directed against the party which has retired from hostilities, but only against other partners still in the field. The aforementioned principle of respecting the duty of faithfulness to one's own country can in such a case no more be applied.

It must moreover be pointed out that the Organization Todt was in no way a para-military organization as has been falsely asserted. Apparently this false assumption has been strengthened by the fact that the German members of the administration of the Organization Todt abroad wore a uniform. These people were considered as Wehrmacht followers, but on the other hand the labor engaged by the firms and the construction workers of the firms as well as the technical personnel were in no such relation.

The reproach cannot be made, therefore, that these native workers were indirectly incorporated into a Wehrmacht organization.

A further reproach against the defendant Speer consists in the fact that prisoners from concentration camps were employed in the economic sector controlled by him. The defendant admitted this. A penal responsibility because of this fact does not, however, stand the test of a legal verification. The employment of convicts for work of an economic nature has always been a practice in Germany. It could be carried out in various ways, partly by employment within the convict prison itself, partly outside. Owing to the lack of labor due to the aggravation of the economic war, it was necessary to draw upon the labor available in the concentration camps.

The Prosecution has submitted documents from which can be seen how much trouble the offices subordinate to the Reich Minister Himmler took to use the reserves of labor contained in the concentration camps for the construction of their own SS plants, and the defendant Speer has supplied information during his hearing before the Court on 20–21 June regarding the efforts of Himmler tending towards building up a separate armament industry of his own, and subordinate to him only, which would have had the result that any control over the production of arms in these intended SS plants would have become impossible, so that the SS could have provided themselves with weapons without the Army or any other offices being able to control them. The defendant Speer successfully fought against this. It was agreed that Himmler would release a part of the inmates of the concentration camps to be employed in the armament industry. Hereby the inmates of the concentration camps gained an improvement of their situation, since in the first place they obtained the higher food rations provided for workmen or for those doing long shifts or heavy work, as has been attested by witness Ricke; moreover, they left the large concentration camps, and were no more under SS control during working hours, but in the plants they were subject to the control of foremen and skilled workmen appointed by the plants. It is true that to avoid transportation and marching difficulties special camps were erected near the plants or working places where they were employed, and these were not accessible to the control of the plant managers nor to the offices of the defendant Speer, but stood exclusively under the control of the offices in charge of the administration of the concentration camps. For the conditions prevailing in such camps neither the plant manager nor the offices of the defendant Speer can be held responsible if abuses occurred there. In general, as attested by the letter of the department chief Schieber of 7 May 1944 to the defendant Speer (*Doc. book II, p. 88*), the inmates preferred work in such plants to an occupation given by the administration of the concentration camp itself; and Schieber quite clearly states in his letter that for these reasons more room should be given to the employment of concentration camp inmates, in order to improve their lot. But he further states that the number of concentration camp inmates employed in the armament industry amounted to 36,000 and that this figure was decreasing. Against this the defendant's assertion at his interrogation that the total number of concentration camp workers employed in the armament industry amounted to 1% of the total number of workmen employed in the whole armament industry is calculated too high. Of 4.9 million workmen engaged in the final processing of armaments the figure of 36,000 represents only 7 per thousand. The number of concentration camp inmates employed in the armament industry represents a very small part of the total labour employed in the final processing of armaments, that is of the total labor employed in the plants manufacturing finished products.

These figures show how misleading the assumption of the prosecution is that the employment of such prisoners in the armament industry had resulted in an increased demand for such labor, and that this increased demand was satisfied by the sending into concentration camps of persons who under normal conditions would never have come there. The opinion that the fact of the employment of prisoners from concentration camps in the armament industry led to an increase in the number of concentration camp inmates is disproved by the already mentioned letter of Schieber (*Exh. 6, p. 88*) and by his testimony, also submitted as Exhibit 37, Document 51. According to this, the employment of concentration camp inmates in the armament industry occurred for the first time in the autumn of 1943 and the number of prisoners employed there reached its peak with the maximum figure of 3,600 in March 1944 and from that time on not only did not increase, but on the contrary decreased. The conclusions of the Prosecution in no way bear examination. Not even the proof has been brought forward that Speer had attempted to have people sent to the concentration camps.

At his interrogation the defendant admitted that everywhere in Germany people were afraid of being sent to a concentration camp. This dread in the population of concentration camps was quite justified, for it depended only on the judgment of the police authorities led by Himmler whether a person was sent to a concentration camp or not, further because there was no legal authority which might have made it possible to check the charges resulting in transfer to a concentration camp and finally, and this is the main reason, because it lay entirely within the discretion of the concentration camp authorities to decide for how long one was to be sent to a concentration camp.

The Prosecution has further asserted that Speer went on having concentration camp inmates employed in industry after he had obtained knowledge of the conditions prevailing in the Mauthausen camp from a visit he made there. That this was not the case is proved by the evidence of the defendant on this point. As it was only a hurried visit, the purpose of which was merely to instruct the camp administration to desist from tasks undertaken in defiance of the prohibition of which served purely peacetime purposes, and instead of this to place labor at the disposal of the armament industry, the defendant Speer could only obtain a superficial impression of the living conditions in the camp. Up to this point his evidence may be referred to.

Moreover through witnesses for the prosecution detailed reference has been made to the fact that during such visits to concentration camps by personalities of high standing the camps were shown from the best side only, and that any signs of atrocities, etc., were carefully removed, so that the visitor should not get a bad impression of the camp (cf. statement of witness Blaha of 1 January 1946).

In connection with this question we will deal with the further reproach of the Prosecution, which asserts that Speer had approved of the use of Hungarian Jews as labor for the construction of the bomb-proof aeroplane factories ordered by Hitler. In respect to this, reference must be made to the evidence of the witness Milch and that of the witness Franck. Milch stated that Speer who was ill at that time, strongly opposed these constructions, but that Hitler, who demanded the undertaking of the work, gave the commission directly to Dorsch, the leader of the Organization Todt (OT), to carry them out. So that the controversy between Hitler and Speer should not become known to outsiders, Dorsch officially remained subordinate to Speer, but in this matter he had to deal directly with Hitler alone and was immediately subordinate to him. In his evidence Milch further stated that those building intentions were never actually carried out. I have submitted Hitler's order to Speer of 21 April 1944 as Exhibit 34, page 52, Document book. This order clearly shows that Hitler shows Dorsch as being directly responsible to him, since the appointment of Speer, who was given the duty of adjusting these building tasks to the building plans under him, was of a purely formal nature. The evidence given by Field Marshal Milch is thus confirmed by this letter.

To support the opinion of the Prosecution that the defendant Speer had contributed to sending people to concentration camps, a statement is quoted which was made at a sitting of the Central Planning Board of 10 October 1942 on the question of shirkers. In this connection one must look at the evidence of the defendant Speer in the witness-box, in which he declared that upon this statement no steps to stop this evil were taken either by the Central Planning Board nor by himself with the General Plenipotentiary for Labor Commitment. Effectively nothing was done about it. It was only in November 1943 that Sauckel issued a decree against shirkers. The term "shirker" is applied to those workers who, in order to evade the fulfilment of their working obligations simulate illness or stay away from work under the pretext of reasons that do not stand the test or even without any reason at all.

It may incidentally be mentioned here that economic warfare did not neglect even this question. Efforts were made in every imaginable way to undermine the willingness to work of the working people. By dropping leaflets and through other channels of information, advice was given to the workers as to how they could report sick, as to what means they were to use in order to succeed in feigning illness at medical examinations, they were invited to work slowly, etc. At first this propaganda succeeded only in isolated cases. As however such isolated cases very easily have unfavorable influence on the working discipline of the personnel as a whole, the defendant Speer discussed the possibility of police intervention. Speer did not, however, take any initiative of any kind which would have led to a practical action on the part of the police. It was not until a year later that a decree was issued by the General Plenipotentiary for Labor Commitment, first making an obligation for the employer to use disciplinary penalties; in particularly grave cases indeed the trustee of production could ask for court punishment. Based on this decree sentences could be pronounced providing for transfer to a worker's training camp for a term of 56 days. Only in exceptionally grave cases of infractions of the working law did the decree of the General Plenipotentary for Labor Commitment provide for transfer to a concentration camp. It must here be mentioned that this decree was applicable both to national and foreign workers in the same way, for in no case were national workers to be treated differently. In the cross-examination of defendant Sauckel the French Prosecution produced the document about a sitting of Sauckel's labor authorities at the Wartburg. At this sitting Dr. Sturm the specialist on questions of labor law at the General Plenipotentiary for Labor Commitment gave a lecture on the punishment of workmen and it was thereby established that only an infinitestimal percentage of workers had to be sentenced to penal punishment.

But from this it results again that the Prosecution has brought forward no proof for the assertion that, as a consequence of Sauckel's decree concerning shirkers, the concentration camps had been filled up, so that a conclusive proof is lacking that Sauckel, or respectively, the defendant Speer contributed by any measures they took to the filling of concentration camps. In his statement before the Central Planning Board of 22 May 1944 (*p. 49 Doc. book, USA Exh. 179*) Speer pointed out that the escaped prisoners of war who were apprehended by the police had to be brought straight back to their work. From this remark we see the basic attitude of the defendant Speer who did not want to see these escaped prisoners of war thrown into a concentration camp, but demanded that they be immediately incorporated into industry. So far the Prosecution has not been able to bring forward a proof that will stand the test for the assertion that Speer had the concentration camps filled in order to obtain labor from them.

Mr. President, perhaps now I may go into the question which you asked me at the beginning of my plea as to how I interpret paragraph 6a of the Statute in regard to the defendant Speer, especially in regard to the terminology, "The waging of a war of aggression." I should like to say the following: The Charter, under 6a, cites, among other punishable actions, the execution of a war of aggression. As for the definition of a war of aggression, I need say nothing here. Professor Jahrreiss has already done that in detail. Here it is only the term "the execution of a war of aggression" that is in question. My point of view is that a war of aggression can be waged only by the person in command. All others are only led, which makes a considerable difference in their participation in the war.

In the case of the defendant Speer, as a result, the waging of a war of aggression can not be applied. I should like to point out the following as well: In a session on about the 28th of February or the 1st of March, one of the judges told Justice Jackson that the prosecution had represented the point of view that the charge of a war of aggression was concluded with its outbreak. I can only share this opinion.

During the hearing of evidence I had ample opportunity to state the activities of the defendant Speer during the last phases of the war from June 1944. I can, therefore, confine myself to proving now in regard to this detailed chronological description that the entire testimony of Speer is covered almost in its entirety by testimonies of other witnesses and by documents. The written depositions of witnesses which I refrained from reading before the court, run along entirely the same lines, although the witnesses came from different camps and expressed themselves in a completely unbiased manner.

Beginning with June 1944, the defendant Speer readily reported to Hitler on the situation of his armament production and pointed out vigorously at the same time that the war would be lost if such decline of production were allowed to continue. This is proved by the memoranda of Speer to Hitler submitted as Speer Exhibits 14, 15, 20, 21, 22, 23, and 24. As stated by the witness General Guderian, Chief of the General Staff of the Army (*compare Q. 6, p. 179 of the Doc. Book Speer*) Hitler defined since the end of January 1945 any such information as high treason and subjected it to corresponding punishment. Nevertheless, as it appears also from the deposition of Guderian (*Q. 9, p. 179, v. Poser, question 22, p. 11*) Speer stated clearly time and again to Hitler as well as to Guderian his opinion about the prospects of the war.

Hitler had forbidden especially to inform third persons about the true situation of the war. Notwithstanding this, Speer informed, after the severest orders of destruction had been issued by Hitler, the Gauleiters and the Commander-in-Chief of various army groups that the war was lost and achieved thus that Hitler's policy of destruction was at least partly prevented. This is evident from the testimonies of the witnesses Hupfauer, Kempf, and von Poser (*Hupfauer, Q. 24, p. 138; Kempf, Q. 10, p. 171; v. Poser, Q. 6, p. 4*).

Hitler declared to Speer on 29 March 1945 that the latter would have to take the consequences customary in such cases, if he continued to declare that the war is lost, i.e., to be shot. This conversation is contained in the testimony of the witness Kempf (*Q. 10, p. 171*). In spite of it Speer travelled already 2 days afterwards to Seyss-Inquart (on 1 April 1945) in order to explain also to him that the war was lost. * * * The witness Seyss-Inquart and the witness Schwebel (Interrogation 11 June 1946, witness Schwebel; interrogation 14 June 1946) stated here unanimously that this conversation with Speer of 1 April 1945 occasioned the conferences of Seyss-Inquart with the Chief of the General Staff of General Eisenhower, General Smith. This led finally to the handing over of undestroyed Holland to the Allies. On 24 April 1945 Speer flew once again to Berlin which was already besieged in order to persuade Hitler that this senseless battle should be given up, as is evident from the testimony of the witness Poser (*Q. 22, p. 11*). In his last will Hitler dismissed Speer on 29 April 45. (*Doc. 3569–PS, p. 87 of the Doc. Book.*)

The American chief prosecutor, Justice Jackson, has therefore been obliged to confirm to the defendant Speer during his cross-examination, that he evidently was the only man who told Hitler the whole truth.

The representatives of the prosecution have produced no evidence that destruction of industries took place in Poland, the Balkans, Czechoslovakia, France, Belgium, Holland during the German retreat. This is in the first place a merit of the defendant Speer who prevented the destruction of the industries of these countries as ordered by Hitler, partly even through a false interpretation of existing orders. That Speer was convinced as early as the summer 1944 that these destructions should be prevented in the general European interest is evident from the testimony of the witness von Poser *(Q. 2, pp. 1, 2; Q. 22, pp. 10, 11)*. It would have been easy by relevant execution of the orders to cripple completely the industries of high standing of Central Europe and of the occupied Western European countries for 2–3 years and with it the entire industrial production and civilized life of these peoples, in fact to make rebuilding by own force quite impossible for years to come.

The witness Seyss-Inquart has stated (testimony of 11 June 46) that the prepared destruction of only 14 points in Holland would have absolutely destroyed the basis of existence of this country. The destruction of all power plants in these countries would have produced a similar effect as in 1941 the destruction by the Soviets of 2 or 3 power plants in the Donetz territory had shown. It was not until 1943 that production there could start again. Similar and still further reaching consequences had to be expected from the carrying out of Hitler's orders on the European continent.

After the success of the invasion of these occupied territories Speer gave the authorization to undertake no destructions, as is confirmed by the witnesses v. Poser, Kempf, Schieber, Kehrl, Rohland, Seyss-Inquart, Hirschfeld in Speer Document 16. Immediately after the appointment of the co-defendant Doenitz as successor to Hitler, he submitted to him orders prohibiting any destruction in the still occupied territories of Norway, Czechoslovakia, and Holland, as well as Wehrwolf activities, as is shown in the testimony of the witness von Poser and Kempf.

Although Speer had no direct authority for carrying out the destruction of industries in the occupied territories, he had to accomplish this task at his own responsibility and through his agencies within the borders of the so-called Greater German Reich. He had to keep especially busy in this connection in order to obstruct the total destruction of all real values which was obstinately demanded by Hitler. Information on this will for destruction on the part of Hitler and many of his Gauleiters is furnished in the testimonies of witnesses Guderian, Rohland, Hupfauer, von Poser, Stahl and Kempf.

The most important document in this regard is the letter of Speer to Hitler of 29 March 45 submitted as Speer Exhibit 24, in which Speer repeats again Hitler's remarks during the conversation on 18 March 45. This document shows clearly that Hitler had made up his mind to destroy completely the foundations of the life of the German people. This document should be especially rich in information about Hitler's time for any future historian.

In connection therewith follows the evidence of the General Colonel Guderian who certifies that in February 1945 Hitler—

1. Confused his inevitable fate with that of the German people.
2. Wished by all methods to continue this senseless fight.
3. Ordered the reckless destruction of all things of real value.

At the same time the demolition and evacuation orders of Hitler and Bormann, which were issued the day after the conference with Speer and are of impressive clearness, have been submitted to the Tribunal as Documents under Speer Exhibit 25–28.

Already since the middle of March 1944 Speer—considering this war inevitably lost—was determined to undertake everything in order to maintain the most urgent vital necessities for the German people, as can be confirmed by the witness Rohland. Notwithstanding the growing danger, he repeated this determination with increasing urgency to his collaborators as the witnesses Kempf, von Poser and Stahl can certify for the months of July and August 1944 and the witnesses Stahl, Kempf, von Poser, Rohland and Hupfauer for the critical period from February 1945 onwards. Numerous orders of Speer dealing with the preservation of industrial plants issued between September 1944 until the end of March 1945 can be submitted to the Tribunal without any gaps. They were at first partly issued without Hitler's authorization, but until February 1945, by a clever use of Hitler's hope that these territories could be reconquered, were subsequently approved by him.

The testimonies of the witnesses Rohland, Kempf, and von Poser, as well as Speer's numerous memoranda regarding the war situation prove that he without sharing it profited by Hitler's illusion in order to prevent these demolitions.

Since the beginning of February 1945 Hitler no longer lent his ear to any such argumentation. The introduction to his demolition orders of 19 March 1945 on the contrary show that he considered it necessary to oppose actively such argumentation. In false orders as those of 30 March 1945 (Speer Exhibit 29) to all industrial plants, as well as those of 4 April 1945 for all sluices and dams, Speer gave instructions—contradictory to the intentions of the orders submitted by Hitler—not to undertake any industrial demolitions. This likewise is corroborated by the witnesses Kempf, Poser and Rohland.

During the month of March the executive power for the demolition of industrial plants and of other objects of value was transferred from Speer to the Gauleiters. During this period Speer acted in open insubordination, and on trips to the danger zones he arranged for the sabotage of these orders. As for instance by clever planning he withdrew the stocks of explosives from the possession of the Gauleiters—which was stated by the witnesses von Poser, Kempf and Rohland—and gave orders that the so-called industrial explosives should no longer be produced, as is proved by the statement of the witness Kehrl, the chief of the Office for Raw Products of Speer's Ministry.

It seems important that Speer had urgently drawn Hitler's attention to the consequences which the demolitions would have for the German people, as is shown in Speer's submitted memorandum dated 15 March 1945 (*Speer Exh. 23*). In this Speer, for example, has established that by the planned demolition of industrial plants and bridges, in the Ruhr for instance, the reconstruction of Germany by her own forces after this war would be made impossible.

It is without doubt mainly to Speer's credit that the industrial reconstruction of Western and Central Europe can progress already today, and that in France, Belgium, and Holland according to their latest reports, production has already reached the level of the peacetime production of 1938.

Speer was the Minister responsible for the means of production, i.e., the factories and their installations. Thus he sat in the transmission center through which Hitler's intentions for the carrying out of these demolitions must necessarily pass. We have noticed in this trial how in an authoritative system such centers are in the position to carry out on a big scale the orders of the Head of the State. It was a fortunate coincidence that at this decisive period a clear-thinking man like Speer directed this office where the industrial demolition must be directed. But with increasing intensification Speer took measures beyond his sphere of action in order to ease the transition for the German people and at the same time to shorten the war. Speer thus tried to prevent the destruction of bridges. Every German knows that up to the last days of the war and to the farthest corner of the German Reich, bridges were destroyed in a senseless way.

Nevertheless his efforts were doubtless only a partial success. The numerous conferences which Speer held in this connection with military commanders are testified to by the witnesses Kempf and Lieutenant Colonel von Poser. This witness was Speer's liaison officer with the army, and accompanied him on all trips to the front.

These conferences were only partially successful. Finally in the middle of March 1945 the Chief of the General Staff of the Army Generaloberst Guderian and Speer tried on the latter's proposal to obtain Hitler's agreement to alter his demolition orders regarding bridges, as is confirmed by the witness Generaloberst Guderian but without success.

Knowing that the consequences of those bridge demolitions could not be foreseen, Speer finally issued on 6 April 1945 six orders in the name of General Winter of the Supreme Command of the Wehrmacht which should arrange for the sparing of the bridges of important railway lines in the Reich and in the entire Ruhr territory. These unauthorized orders were confirmed by the statements of the witnesses von Poser and Kempf.

Noticing at the end of January 1945, that, from a long range view, the guarantee of sufficient food supplies for the German people and the spring preparations for the harvest of 1945 in particular were endangered, Speer allowed the requests for armament and production, which were in his jurisdiction, to be superseded and gave priority to the interests of food supply.

That this did not only deal with the actual food situation but merely in order to relieve the transition period after the occupation by the allied troops is proved by the statements of the witnesses Hupfauer, Kehrl, Rohland, von Poser, Riecke, Secretary of State in the Ministry of Food, Milch, Kempf and Seyss-Inquart. When Speer believed that renewed apprehensions that

Hitler, induced by his close collaborators in Party circles, would use poison gas in the fall of 1944 and then in the spring of 1945 were justified, he opposed this determinedly as it is proved in his cross-examination by the U.S. Prosecutor Justice Jackson and by the testimony of the witness Brandt. Speer's statement that out of this apprehension he had shut down the German poison gas production as early as November 1944 was confirmed by the witness Schieber. Speer at the same time established that the military authorities unanimously opposed such a plan.

Finally since the end of February 1945 the defendant Speer had tried by the planning of a conspiracy to bring the war quickly to an end.

The statements of the witnesses Stahl and von Posen show that Speer had planned other forced measures. Chief Justice Jackson likewise has established in the course of Speer's cross-examination that the prosecution knew of further plans, which were to be executed under Speer's leadership.

Speer's political attitude, apart from all these activities, is illuminated by two facts:

1. In Speer's memorandum addressed to Hitler, submitted as Exhibit 1, the defendant establishes that Bormann and Goebbels marked him estranged from the Party and hostile to it, and that a continued collaboration would be impossible should he and his collaborators be judged by Party-political measures.

2. In their Government list of 20 July 1944 the Putschists quoted Speer as Armament Minister and as the only Minister of the Hitlerite System, as the witnesses Ohlendorf, Kempf, and Stahl stated.

Would these circles have proposed Speer as Minister, if he had not been considered an honest and unpolitical expert in Germany and abroad? Is not merely the fact, that he, as one of the closest collaborators of Hitler, was chosen for this post, a further proof for the high respect which the opposition thus paid him?

Honorable Judges, let me say a few more fundamental words about the Speer case itself. When the defendant took over the office of Minister at the age of 36, his country was in a life and death struggle. He could not evade the task with which he had been charged. He devoted his entire energy to the solution of the task, which seemed almost unsolvable. The successes which he obtained there did not cloud his view to the actual condition of things. Too late he realized that Hitler was not thinking of his people, but only of himself. In his book "Mein Kampf" Hitler wrote that the government of a people always had to remain conscious of the fact that it could not plunge the people into disaster. Its duty was rather to resign at the right time, so that the people could continue to live. Naturally, such principles were valid to Herr Hitler only for governments in which he had no part. For himself, however, he was of the point of view that if the German people should lose this war, they would have proved themselves the weaker ones and would no longer have any right to live. In contrast to this brutal egoism, Speer had preserved the feeling that he was the servant of his people and his nation. Without consideration for his person and without consideration for his safety, Speer acted as he considered it his duty towards his people to act. Speer had to betray Hitler in order to remain faithful to his people. Nobody will be able to withhold his respect from the tragedy which lies in this fate.

2. FINAL PLEA of Albert Speer

Mr. President, may it please the Tribunal: Hitler and the collapse of his system have brought a time of tremendous suffering upon the German people. The useless continuation of this war and the unnecessary destruction, in addition, make it difficult for the work of reconstruction. Privation and misery have come to the German people. After this trial, the German people will condemn Hitler as the proven originator of its misery, and despise him.

Yet the world will learn from these happenings not only to hate dictatorship as the form of a state, but to fear it.

Hitler's dictatorship differed in one principle from all its predecessors in history. His was the first dictatorship of an industrial state in this time of modern technical development, a dictatorship which, for the domination of its own nation, availed itself of all technical means in a perfect manner.

Many of the apparently improbable phenomena of this trial would not be possible without these technical developments. Through the means of these developments like the radio and the loudspeaker, 80,000,000 people were deprived of this power to think independently. Through these means they were subjected to the will of one man. The telephone, the teleprinter, and radio made it possible that, for instance, orders from the highest sources could be transmitted directly to the lowest ranking units, where because of their great authority, they were carried out without criticism. Of it was achieved that numerous departments and agencies came into direct contact with the top-ranking leaders from whence they received their sinister orders directly. Or it happened that there was a far-reaching supervision of the citizen of the state and a high degree of secrecy of criminal events.

Perhaps to the outsider this machinery of the state may appear like the cables of a telephone exchange—apparently without system. But just like this, it could be served and dominated by one single will.

Earlier dictators during their work of leadership needed collaborators, with the highest qualities even at the lowest level, men who could think and act independently.

The totalitarian system in a time of modern technical development does not depend on them; even the instruments of communication alone place it in a position where the work of the lower ranking leaders can be mechanized. As a result there arises the new type of the recipient of orders who does not criticize.

We had only reached the beginning of the development.

The nightmare of many a man that one day technical developments might domineer entire peoples had merely been realized in Hitler's totalitarian system.

Today the danger that technical developments may terrorize them overshadows every country in the world. In the modern dictatorship, this to me, seems inevitable.

Thus, the more technical the world becomes, the more the counter-balancing influence of the advancement of individual freedom and self-possessedness of man is essential.

Hitler not only used technical developments to dominate his own people—he had nearly succeeded, by means of his technical lead, in subjugating the whole of Europe. It was merely due to some principal shortcomings of organization, such as are typical for a dictatorship because of the absence of criticism, that before 1942 he did not have twice as many tanks, aircraft, and submarines.

But, if a modern industrial state uses all its intelligence, its science, and technical developments as well as its entire production for a number of years in order to gain a lead in the sphere of armament, then it can also, by the use of its manpower and because of the established lead in the technical sphere, completely overtake and conquer the world, particularly if other nations during that same period employ their technical abilities in the service of cultural progress of humanity.

The more technical the world becomes, the greater will be this danger and the more serious will be an established lead in the sphere of the modern means of warfare.

This war has ended on the note of radio-controlled rockets, aircraft developing the speed of sound, novel submarines and torpedoes, which could find their own target, of atom bombs, and with a prospect of a horrible type of chemical warfare.

By necessity the next war will be in the shadow of these new destructive inventions of human minds.

In five to ten years this technique of warfare will offer the possibility of firing rockets from continent to continent with uncanny precision. Through the smashing of the atom it will be in a position to destroy, in the center of New York, perhaps 1,000,000 people in a matter of seconds with a rocket serviced, perhaps, by ten men. Invisible, without previous warning, faster than sound, by day and by night. The scientists of various countries are able to spread among human beings and animals various diseases and destroy the harvests. Chemistry has at its disposal terrible weapons with which it can inflict unthinkable sufferings upon helpless human beings.

Will there once again be a nation to use the technical of this war for the preparation of a new war, while the remaining world exploits the technical of this war for the benefit of humanity, thus attempting to create minute compensation for its horrors?

As a former minister of the highly developed armament system, it must be my last duty to state this.

A new large-scale war will end with the destruction of human culture and civilization. Nothing will prevent the unleashed technique and science from completing its work of destruction of humanity, which it had begun in so dreadful a way in this, the last war.

That is the reason why this trial must be a contribution for the prevention of such distorted wars in the future and for the establishment of principles for human cohabitation. What is the significance of my own fate after everything that has happened, in the light of this high goal?

During the past centuries, the German people has contributed much towards the creation of human culture. Often it has made this its contribution in times when it was just as powerless and helpless as it is today. Valuable human beings cannot be driven to despair. They are bound to create new, lasting values and, under the tremendous pressure brought to bear upon everyone today, these new works will be of particular significance.

But if the German people in the inevitable times of its poverty and powerlessness—but simultaneously also the time of its reconstruction creates new works of culture, then it has, in that way, made its most valuable contribution to the happenings in this world which it could possibly be in a position to make.

It is not the battles of war alone which shape the history of humanity; they are, in a higher sense, the cultural contributions which one day will become the common property of all humanity. But a nation believing in its future will never perish. May God protect Germany and the culture of the Occident.

3. DOCUMENTS

[Following are translations of documents which were introduced in evidence, in whole or in part, as part of Speer's defense. They are published because of their unique historical importance. —Ed.]

SPEER DOCUMENT 004

Teletype from Speer to General Studt
Paris of 4 January 1944

In a conference which took place today the Fuehrer has ordered Gauleiter Sauckel to procure the labor needed by the German war economy from the European territory after more exact planning. In this task he is to be supported by all agencies of my field of command. Gauleiter Sauckel will for the time being start negotiations with the appropriate agencies with regard to the occupied western territories, in order to clear up the manner and possibility of the execution. In this respect it must be secured above all circumstances that an endangerment of the economy of these territories does not take place through the reductions.

The Fuehrer has additionally ordered that—

1. The labor which is presently employed in restricted war plants [Sperrbetrieben] and which will arrive in future through voluntary recruiting or through mediation in the occupied territories and Italy are to be protected from any transfer to Germany, and

2. The labor which is still lacking in the restricted war plants [Sperrbetrieben] is to be procured for them expeditiously and with priority.

[signed] SPEER

SPEER DOCUMENT 008

[Excerpts from the Fuehrer Conferences of 19–22 June 1944]

* * * * * * *

8. Reported to the Fuehrer the raw steel shortage in the month of May, and at the same time indicated the gravity of the shortage in the occupied Western territories.

9. At the same time I called the Fuehrer's attention to the fact that in my opinion, in spite of present transportation difficulties at the Front, there was by no means any question of giving up industrial capacities there, even if the manpower is at times unemployed. Production in the occupied Western territories is to be

brought to its peak as speedily as possible. The Fuehrer agreed with this opinion and himself determined that decisive measures which might be inferred from the present traffic emergency are not to be executed.

[signed] SPEER

SPEER DOCUMENT 009

Fuehrer minutes of 11/12 September 1943

The Fuehrer sets forth that the most important Italian production plants (defense armament plants) must maintain their feeding at about the level of German food rations in order to attain high performances. Dependents of workers must also be taken care of adequately.

LEYERS: Name defense armament plants.

HUPFAUER: Have Sauckel do what is necessary.

[signed] SPEER

SPEER DOCUMENT 011

Fuehrer minutes of 21/22 March 1942

The Fuehrer declared quite clearly in a lengthy statement that he did not agree with the poor feeding of the Russians. The Russians must absolutely receive sufficient food and Sauckel is to see to it that this food is now guaranteed to Backe.

The Fuehrer is surprised to hear that Russian civilians are treated like prisoners of war behind barbed wire.

I explained to him that this was a consequence of an order given by him. The Fuehrer does not know anything about such an order. I request the particulars about this to be given to me for the next Fuehrer portfolio and at the same time to have Sauckel see to it that the Russian civilians are no longer treated like prisoners of war.

[signed] SPEER

SPEER DOCUMENT 013

Fuehrer minutes of 30 May 1943

Furthermore the German miners are if possible to be treated better than before as far as food is concerned. The Russians are to receive plentiful additional food which is to be distributed individually by the plant manager on the basis of performance.

Furthermore the Germans as well as particularly the Russian prisoners of war are to be allotted bonuses in the form of tobacco and similar things for special performance.

[signed] SPEER

SPEER DOCUMENT 014

Letter from Hitler to Speer on 21 April 1944

Fuehrer Headquarters, 21 April 1944

The Fuehrer
To the Reich Minister for Armaments and War Production and
Chief of the Organization Todt
Mr. Reich Minister SPEER
Berlin W.8

I order the manager of the Central Office of the Organization Todt, Ministerial Director Dorsch, while retaining his other functions within the limits of your sphere of tasks, to carry out the construction of the 6 fighter planes [Jaegerbauten] ordered by me.

You will see to it that all conditions necessary for prompt execution of this construction will be created. In particular, you will secure as perfect synchronization as possible with other construction of war importance, if necessary calling upon me for a decision.

[signed] Adolf HITLER

SPEER DOCUMENT 015

[Memorandum of Speer to Adolf Hitler of 30 June 1944 on production of fuels]

* * * By this the enemy succeeded on June 22d in increasing the shortage of aviation gasoline to 90%. * * *

* * * But then perforce in September of this year the flow of the quantities necessary to cover the most urgent needs of the Wehrmacht cannot be guaranteed anymore, which means that *from that time on there will be an insurmountable gap, which must lead to tragic consequences.*

SPEER DOCUMENT 016

[Memorandum of Speer for Adolf Hitler on 30 August 1944 concerning the Situation in the Chemical Industry]

* * * * * * *

Page 10

If the attacks on the chemical industry will be of the same strength and of the same accuracy in September as in August, chemical production will further decrease and the last stocks will be exhausted. Thus those materials are lacking in the most important fields, WHICH ARE NECESSARY FOR THE CONTINUATION OF A MODERN WAR.

SPEER DOCUMENT 017

[Memorandum from Speer to Adolf Hitler on situation of coal production and supply, dated 11 November 1944]

* * * * * * *

Page 8.

* * * Since my verbal report of 3 November the production situation has become extremely critical and is drifting towards conditions which MUST LEAD TO THE MOST SERIOUS BOTTLENECKS * * *

Page 9.

* * * ON ACCOUNT OF INADEQUATE DELIVERIES, THE STOCK OF COAL FOR OFFICIAL USE FOR THE REICHSBAHN IS REDUCED AT THE PRESENT, BY A DAILY AVERAGE OF APPROXIMATELY 40,000 TONS * * *. Especially the main offices of the Western German Reich Railway, with the exception of the ones located directly in the Ruhr territory, but also others show stocks far below average, most of them for only 5 more days (Berlin 5 days, Stuttgart 2 days) * * *

Page 11.

* * * The Reich Commissioner for sea navigation weeks ago already reported a critical situation in Hamburg, the ports of Schleswig Holstein, and the serious damage caused to sea navigation thereby * * *.

* * * Many electrical plants were fighting to go on with inadequate opportunity for delivery and with stocks declined already below the ten day limit * * *.

* * * Especially critical is the supplying of gas works, particularly as other coal districts cannot in the least make up for the loss of Ruhr fuel.

Page 17.

* * * *For weeks there has been actually a technical traffic blockade of the Ruhr territory from its market outlets to an increasing degree.*

Page 18.

* * * The supplies of the industry of the suffering territories, which still amounted at the beginning of September to an average

of from 4 to 5 weeks, have decreased at present according to reports on hand to LESS THAN 8 TO 10 DAYS, IN THE TERRITORIES SUPPLIED BY THE WESTERN GERMAN COAL PITS. *They will be exhausted by the end of the month of November if no decisive improvement of the deliveries can be achieved* * * *.

Page 27.

* * * According to the whole structure of the Reich economy it is obvious that a failure of the territory of the Rheinish Westphalian Industry in the long run will be unbearable FOR THE WHOLE GERMAN ECONOMY AND THE SUCCESSFUL CONTINUATION OF THE WAR. In fact at the present the Ruhr territory, with the exception of the products manufactured within the sector, is a TOTAL LOSS for the German economy.

Page 29.

* * * It is not necessary to discuss the consequences for the whole German Reich which will result from a long deprivation of the Ruhr territory * * *.

SPEER DOCUMENT 018

[Memorandum of Speer to Adolf Hitler 30 January 1945 regarding the Economic Situation]

* * * * * * *

Page 5.

* * * IT IS *IMPOSSIBLE* TO MAINTAIN GERMAN ECONOMIC LIFE IN THE LONG RUN WITH THE COAL STILL ON HAND AND THE CAPACITY FOR RAW STEEL PRODUCTION * * * This threatened German economic collapse can be delayed for a few months * * *.

THUS THE ARMAMENT PRODUCTION IN JANUARY, FEBRUARY, AND MARCH IS MERELY THE COMPLETION OF AN EARLIER PRODUCTION, WHICH WAS ESTIMATED ON A MUCH HIGHER SCALE.

THE ACTUAL PRODUCTION FIGURES, CORRESPONDING TO THE PRESENT RAW STEEL PRODUCTION, CAN ONLY BE A FRACTION OF JANUARY'S PRODUCTION.

AFTER THE LOSS OF UPPER SILESIA, GERMAN ARMAMENT *WILL NOT BE IN A POSITION TO COVER EVEN PARTIALLY THE REQUIREMENTS OF THE FRONT IN MUNITIONS, WEAPONS AND TANKS, THE LOSSES ON THE FRONT AND THE NEED FOR REPLACEMENTS.*

THE MATERIAL SUPERIORITY OF THE ENEMY CAN THEREFORE NO LONGER BE COMPENSATED EVEN BY THE BRAVERY OF OUR SOLDIERS * * *.

SPEER DOCUMENT 019

Speer's Speech in Hamburg on 16 April 1945

Never before was a civilized people so hard hit, never before were destruction and war damages so extensive as in our country, and never before did a people endure the hardships of war with greater endurance, tenacity, and faith than you.

Now you all are dejected and shaken to the utmost. Your love turns into hate and your endurance and tenacity into weariness and indifference.

THAT MAY NOT BE.

The German people have displayed a united attitude in this war that in future times will arouse the admiration of unpartial history. We must not at the present moment mourn and weep over the past. Our fate can only be borne further through desperate work. But we can only help ourselves if we determine on a sober basis of realities what is required at the present moment.

There is here only one task of importance: Avoid anything that may take away entirely from the German people its already so greatly reduced basis of living. The preservation of our places of labor, our communication system, and all other installations vital to supply the nation's needs is the first condition for the maintenance of our people's power. Therefore everything must be avoided during this phase of the war that may unleash further destruction of our economy.

As the Reich minister responsible for the maintenance of roads, waterways, power plants, and the restoration of traffic I therefore order as follows in agreement with the supreme commanding offices [Kommandostellen] of the Branches of the Wehrmacht:

1. Any destruction or crippling of a bridge, a plant of any kind, a waterway, or of railway or news services is from this moment prohibited.

2. All bridges are to be demined. All other preparations for any other destruction and paralyzing measures are to be removed. Where paralyzing actions have already been carried out, the individual items removed are to be returned to the plants.

3. Protective measures for plants, railways, and news services are to be taken locally at once.

4. These directives are valid as well for the German Reich ter-

ritories as for occupied Norway, in Denmark, in Bohemia and Moravia, and in Italy.

5. Anyone disobeying these orders consciously and decisively harms the German people and is therefore its enemy.

The soldiers of the Wehrmacht and the Volkssturm are hereby instructed to take action against these enemies of the people with all means, and if needed with firearms * * *.

In order to avoid injustices and grave lapses in this last phase of the war, it is ordered in the interest of the German that—

1. Prisoners of war and foreign workers are to remain at their place of work. Whenever they are already on the move, they are to be directed towards their own home.

2. In the concentration camps the political prisoners and with them the Jews are to be segregated from the anti-social elements. The former are to be surrendered unharmed in camp to the occupying troops.

3. Execution of sentences for all political prisoners, including Jews, is to be deferred until further notice.

4. The service of the "Volkssturm" against the enemy is voluntary. Moreover the Volkssturm is duty bound to preserve peace and order in the country.

The members of the NSDAP also are duty-bound to participate in the tasks of the "Volkssturm" up to the time of occupation, in order to show that they are to render service to the people up to the very end.

5. The activity of the "Wehrwolf" and similar organizations is to be halted at once. It gives the enemy a justified occasion for reprisals and moreover it impairs the conditions required for preserving the strength of the people.

Order and fulfilment of duty are an essential condition for preservation of the German people * * *.

* * * The military blows which Germany has received during the last few months are staggering. It no longer rests with us to determine whether our fate is turning.

Only a more favorable providence can change our future. We ourselves however can contribute our share by doing our work resolutely and diligently, by meeting the enemy honorably and with self-confidence, and by becoming inwardly modest and applying self-criticism, and finally by trusting unflinchingly in the future of our people, which will survive for ever and ever.

May God protect our Germany.

SPEER DOCUMENT 021

14 September 1944

KR-Teletype
The Gauleiters Hoffman, Schlesmann, Florian,
For information: to Gauleiters Buerckel, Wagner, Simon, Grohe.
Chairmen of Armaments Commissions VIa, VIb, XIIa, XIIb, Vb.

Subject: Paralyzing of plants.

The present situation makes it necessary to provide in detail measures for the possible paralyzing of the plants in the Rhenish-Westphalian industrial districts.

For the industrial district as for the South West the directive applies, that basically it is only permissible to paralyze, that is that by removal and transfer of any essential machinery aggregate mostly electrical, the working capacity is temporarily disrupted, without the installations themselves being damaged.

As in view of congested conditions in these districts it can hardly be expected that the parts essential for paralyzing parts can be removed and transported from all plants at the same time, care is to be taken that the machinery aggregates for immediate armament production, that is shell presses, ordnance shops, etc., are removed before anything else. The actual raw material producing plants, the mines, and the steel working industries take only second or third place in the carrying out of such measures.

I have appointed the chairmen of the armament commissions as deputies for the paralysis and evacuation and request you to get into touch with them in all problems pertaining to this.

[signed] SPEER

SPEER DOCUMENT 022

15 September 1944

KR-Teletype
To the Reichsleiter Martin Bormann

Dear Party-member Bormann!

I deem the following teletype of mine necessary for the unification of opinion concerning the removal or paralyzation of industries in the Western Gaus therefore I request its transmission with a short directive to—

The Gauleiters Wagner, Buerckel, Simon, Grohe, Florian, Schlossmann, Hoffman, Meyer.

The Fuehrer has established that within a short time he can effect the recapture of the territories which are now lost.

Considering the great importance of the Western provinces for armament and war production, all measures anticipated for the evacuation must be aimed at enabling the industry of these zones to again run at full capacity within a short time.

Therefore far reaching destruction must be refrained from.

The following general directions which I have already brought to your knowledge through the chairmen of the armament commissions are still valid in certain items and I briefly summarize them once more.

1. In endangered areas the stores of raw materials and half-finished products are to be reduced to the minimum which is necessary for the maintenance of production. Finished goods are to be shifted immediately from these areas.

2. I permit the evacuation only of plants whose output amounts to over 50 percent of the total German production. All other enterprises must maintain their manufacture on the spot until the last minutes, as it is impossible to transfer these plants in their totality to the Reich. It is of greater advantage for a plant to carry on its armament production for another 4 weeks in its old location than for it to be sent traveling and on account of the scarcity of factory space in other parts of the Reich, it would require some months before it could assume production. Moreover the extent of the evacuation, notwithstanding the restrictions, is so great that the means of transportation will hardly be sufficient.

3. Therefore these plants must be assured of being supplied as long as possible with all necessary electricity, gas, and water, etc. Moreover the premature abandonment or destruction of powerplants leads to danger to the troops. It must be considered, that even far behind the frontline the news network of the mails depends on the powerplant of a city, so that failure of a power station would make news transmission to the troops partially impossible.

4. Only in the last minute will industrial installations be made useless for a longer period by "paralyzing" the plants. This paralysis consists generally in the dismantling of important electrical aggregates and in their removal with an exact description. There is less sense in the destruction of electrical power stations because due to the great damage done to the German electrical industry by air attacks, replacement after the reoccupation will only be possible under the greatest difficulties.

5. In mining areas electric plants must be maintained in order to allow the water supply of the mining pits to be kept in order.

It takes months for the mines to resume work after pumps have failed and pits have been inundated.

6. In planned evacuation of mining areas care must be taken that these vital power stations remain occupied and that the other works, the evacuation of which has not been anticipated, are to be kept working as long as possible.

[signed] SPEER

Will you please ascertain from the Fuehrer whether the presuppositions of this letter according to which these territories are to be reoccupied by us within a short time are still correct. The loss on the left bank of the Rhine in the long view is hardly bearable for the armament and war production. I therefore consider it correct that the three principles of this letter—

1. That production must be maintained to the last minute,
2. That the plants must only be "paralyzed", and
3. That evacuation must be effected only in the most important cases

will be approved by the Fuehrer.

Will you please telephone me after receipt of this teletype.

Yours,

[signed] SPEER

SPEER DOCUMENT 025

1. To Gauleiter Simon Berlin W.8, 5 Sept. 44
Koblenz (1121)

* * *

In any case provisions must be made that the Minette, the Luxemburg area, and also the other industrial districts, if they should fall in enemy hands, are only paralyzed in their industries, that is that their operation is interrupted for a few months by removal and transfer of any essential machinery aggregates, mostly electrical, without the plant itself being damaged * * *.

The Reich Union Coal and Iron will be instructed accordingly.

[signed] SPEER

2. Copy to Gauleiter Grohe
Copy to Gauleiter Buerkel
3. Mr. Dr. Rohland
with the request to provide similarly for the Saar district, Meurthe et Moselle, etc. Enclosure: Letter Simon.
4. To the Reich Union Coal attention of Mr. Pleiger with request

to provide similarly for the endangered coal districts of Belgium, Holland, and the Saar district. The pumping installations for the pits must remain in working order.
Enclosure: Letter Simon.

SPEER DOCUMENT 026

BERLIN, 15 MARCH 1945.

ECONOMIC CONDITIONS MARCH–APRIL 1945 AND INFERENCES

THE ENEMY AIR FORCE HAS CONCENTRATED FURTHER ON TRAFFIC INSTALLATIONS. ECONOMIC TRANSPORTATION HAS THEREBY BEEN CONSIDERABLY REDUCED.

THROUGH THE TRANSFER OF THE FRONT TO THE RHINE NUMEROUS SOFT COAL REGIONS AND LARGE SOFT COAL POWER PLANTS HAVE BEEN LOST.

THE IMMEDIATE EFFECT OF ARTILLERY ON THE RUHR AREA AND INCREASED AIR ACTIVITY BY DAY AND NIGHT, DUE TO THE PROXIMITY OF THE FRONTS HAVE RESULTED IN FURTHER INROADS IN THE RUHR AREA.

WHEREAS THE RUHR AREA IN FEBRUARY STILL PRODUCED 8100 CARLOADS OF COAL DAILY, THE PRESENT PRODUCTION HAS DECREASED TO ABOUT 2–3000 CARLOADS DAILY. THE TRANSPORTATION OF COAL FROM THE REMAINING UPPER SILESIAN TERRITORIES COULD NOT BE INCREASED.

QUALITY COAL PRODUCED DAILY IS—

AT THE PRESENT TIME		*COMPARED TO NORMAL DELIVERIES*
FROM THE RUHR AREA	3 000	20 000
FROM UPPER SILESIA	3 700	24 000
FROM THE SAAR AREA	1 000	24 000
TOTAL	7 700	68 000

WITH THESE PRODUCTION FIGURES, NEITHER SEA NAVIGATION, REICH RAILROADS, GAS AND ELECTRICAL PLANTS, FOOD ECONOMY, NOR, IN THE LAST ANALYSIS THE WAR ECONOMY, CAN IN NO WISE ANY LONGER BE SUPPLIED WITH COAL (SEE ENCLOSURE 1—REICH COAL ASSOCIATION REPORT OF 7 MARCH 45). SINCE THE LOSS OF UPPER-SILESIA THE REICH'S ECONOMIC COLLAPSE IS TAKING PLACE WITH INCREASING RAPIDITY, THROUGH THE RENEWED DE-

CISIVE RETRENCHMENTS IN SUPPLY OF COAL THIS PROCESS HAS BEEN CATASTROPHICALLY ACCELERATED.

WITHIN 4–8 WEEKS ONE MUST THEREFORE COUNT WITH CERTAINTY ON THE FINAL COLLAPSE OF GERMAN ECONOMY.

NEITHER AN ARMAMENTS OUTPUT CAN THEN BE GUARANTEED, NOR WILL RAILWAY AND SEA NAVIGATION THEN BE IN A POSITION TO TAKE CARE OF THE TRANSPORTATION ASSIGNED TO THEM, WITH THE POSSIBLE EXCEPTION OF THE OPERATING TRANSPORTS. *AFTER THIS COLLAPSE THE WAR CAN ALSO IN A MILITARY SENSE NO LONGER BE CARRIED ON.*

THE NATION HAS DONE ITS DUTY IN THIS WAR AND HAS CARRIED OUT ITS TASK UNDER CIRCUMSTANCES WHICH WERE FAR MORE DIFFICULT *THAN IN ANY PREVIOUS WAR.*

IF THE WAR IS LOST IT WILL DEFINITELY NOT BE DUE TO ITS FAILURE.

It is the responsibility of us leaders to help the nation in the dark hours which are to be expected.

WITHOUT REGARD FOR OUR FATE, WE MUST QUESTION OURSELVES SOBERLY IN THIS MATTER HOW THIS CAN BE ACHIEVED ALSO IN THE MORE REMOTE FUTURE.

If the opponent wishes to destroy the nation and its basis of life, then he must do the job himself. WE MUST DO EVERYTHING TO MAINTAIN, EVEN IF, PERHAPS IN A MOST PRIMITIVE MANNER, A BASIS OF LIFE FOR THE NATION TO THE LAST.

Measures must be taken everywhere to carry out this viewpoint.

Local disaster can be prevented by clear directives. Nobody may adopt the point of view that the fate of the German people depends on his personal fate.

It must be ascertained that in these weeks it must be the principal duty of the leadership to help the people wherever possible.

For the partial field of German production and transportation FOR WHICH I AM RESPONSIBLE the following must be initiated:

1. It must be guaranteed that, if the battle advances further into the territory of the Reich, nobody has the right to destroy industrial plants, coal-mines, electric plants, and other supply facilities as well as traffic facilities, internal shipping routes,

etc. While previously plants have been paralyzed for one or two months because individual parts had been removed in order to make possible their utilization within a short time after their recapture, this system must now also be carried out IF RECAPTURE DOES NOT SEEM POSSIBLE. The industrial plants and the basic industries are just as much part of the vital strength of the German people as agriculture. Neither would anyone harbor the thought of rendering the German fields infertile for years by virus. IT IS JUST AS IMPOSSIBLE ON OUR PART TO TAKE FROM THE MINER AND THE INDUSTRIAL WORKER THEIR EXISTENCE.

2. Preparations for the detonation of bridge structures of the Reich Railway or of road constructions have already been made extensively. It is of course necessary to detonate the bridge-structures over the large rivers, if this can serve to prevent a further advance of the enemy. However, it cannot possibly be in accordance with the idea of warfare in the homeland to destroy so many bridges that with the limited facilities available after the war it will take years to reconstruct the traffic network. These destructions of bridge-structures and traffic facilities are to be carried out only if absolutely necessary and only in places which are tactically outstanding and appropriate for the extensive defensive positions. They are only to be initiated by the OKW or by the army groups. With a detonation of the bridges to the extent planned, the traffic facilities would be destroyed more effectively than the air attacks of the past years were able to achieve.

THEIR DESTRUCTION MEANS THE REMOVAL OF ANY FURTHER POSSIBILITY FOR EXISTENCE OF THE GERMAN PEOPLE.

3. The distribution of all stores of clothes and other consumer goods, insofar as they can be used by the civilian population, must be prepared without delay and must be taken care of by code word. Stocks are still large. Insufficiencies, which occur because of transportation difficulties, must be accepted. Furthermore, the order is to be issued to prepare also for the stores of the Armed Forces—including the food dumps—such a distribution action, which will be initiated by code word. A DISTRIBUTION OF THE CIVILIAN AND MILITARY STORES CAN HELP THE PEOPLE SOMEWHAT TO OVERCOME THE SERIOUS TIMES WHICH MUST BE EXPECTED.

4. IT IS MATTER OF COURSE IN SUCH A SITUATION THAT THE PROTECTION OF THE GERMAN FOOD SUPPLY —FOR THE REMOTE FUTURE ALSO—MUST BE IN THE

FOREGROUND OF ALL EFFORTS. IT HAS THEREFORE ALREADY BEEN ORDERED THAT THE MEASURES NECESSARY FOR THE FOOD SUPPLY ARE CARRIED OUT IN THE COMMUNICATION SYSTEM AS WELL AND ALSO IN ALL OTHER FIELDS. The devastations of this war in the German cities can only be compared to those of the Thirty Years' War. It cannot be forecast whether the events which follow a defeat will also have as consequence a decrease of the population figure similar to that period. The people will have to bear the greatest burdens, which however will bring severe selection, and thus will retain a good core of this unique people for the remote future. WE ARE NOT ENTITLED TO CARRY OUT DESTRUCTIONS ON OUR PART AT THIS STAGE OF THE WAR, WHICH MIGHT AFFECT THE LIFE OF THE NATION. IF THE ENEMIES WISH TO DESTROY THIS NATION, WHICH HAS FOUGHT WITH A UNIQUE BRAVERY, THEN THIS HISTORICAL SHAME SHALL REST EXCLUSIVELY UPON THEM. *WE HAVE THE OBLIGATION OF LEAVING TO THE NATION ALL POSSIBILITIES, WHICH IN THE MORE REMOTE FUTURE MIGHT BE ABLE TO INSURE IT A NEW RECONSTRUCTION.*

[signed] SPEER

SPEER DOCUMENT 027

Hitler's order for destructions dated 19 March 1945
TELETYPE

To Reich Minister Speer
Duplicate to: * * *

The Fuehrer on 19 March 1945 issued the following command:

Re: Measures for destructions in Reich Territory.

The struggle of our nation for existence also forces the utilization of all means to weaken the fighting power of our enemy and to prevent further advances. Advantage must be taken of all opportunities to inflict the most enduring damage to the striking power of the enemy directly or indirectly. It is a mistake to believe in the possibility of work resumption for our own purposes of undestroyed or only temporarily paralyzed traffic, communications, industrial, and supply installations after the recapture of lost territories. On his retreat the enemy will leave behind only scorched earth and refrain from any consideration for the population.

I therefore command—

1. All military traffic, communications, industrial, and supply-

installation as well as objects on Reichs territory, which the enemy might immediately or later utilize for the continuation of his fight, are to be destroyed.

2. The military commands are responsible for the execution of this destruction of all military objects including traffic and communications installations. The Gauleiters and Commissioners for Reich Defense are responsible for the destruction of the industrial and supply installations as well as of other valuable objects; the Gauleiter and Commissioners for Reich Defense are to be given necessary assistance by the troops in carrying out this task.

3. This command is to be transmitted as promptly as possible to all troop commanders; orders to the contrary are null and void.

[signed]: Adolf Hitler

OKW/WFST/Op/Qu No 002711/45 Top Secret
[signed] WINTER Lieutenant General
and Deputy Chief West

SPEER DOCUMENT 028

Teletype—KR
R V M

In execution of the Fuehrer's order, High Command of the Wehrmacht West/OP/Qu 2 No 271.45 top secret of 19 March 1945 as to demolitions in the Reich territory, the following is ordered for *traffic installations:*

1. In future installations are to be destroyed effectively on the abandonment of an area. Deviations in special cases are ordered by the High Command of the Wehrmacht. All restrictive orders including those reservations contained in the decree OKW/West/Qu 2 No. 07069/45 secret of 15 September 1944 Ziff. 4 are void.

2. Commando authorities are responsible for the destructions of all traffic installations. They order the preparation, release, and execution.

3. The General in charge of the transport system is hereby made technical adviser to the Commando authorities. In cooperation with local offices of the Reich Minister of Communications (RVM) he suggests objectives and extent of the demolition of traffic installations. (Railroad and Inland Shipping.)

4. Demolitions are effective only when they are carried out on the widest scale. Execution must therefore be effected through the RVM by its own forces and the auxiliary forces at its disposal. For objectives which represent technical difficulties, railway engineers are to be used, and whenever they do not suffice

military engineers or other troops units are to be utilized. Cooperation between these various forces is to be insured by the General in charge of Transport in agreement with the competent local offices of the RVM.

5. The object is the creation of a transportation desert in the abandoned area. Scarcity of explosives demands inventive utilization of all possibilities of lasting destruction. (Utilization of all kinds of ammunition, also captured ammunition, fire, smashing of important parts.) Besides all objectives vital for the transport system (all kinds of artificial constructions [Kunstbauten] rail factory and work shop installations) as well as the entire rolling and floating stock (in particular locomotives, tugs, draisines) whenever they cannot be removed are to be destroyed completely by means of every possible expedient. In this way strong barriers and obstacles will be created by the concentration of rolling stock and fire. Lack of locomotives and carriages is effective, particularly against the Eastern enemy dependent on booty.

6. The RVM and the Reich Ministry Speer are asked to advise their subordinate offices in accordance with the directives given above.

Chief of the transport system of the Wehrmacht — Planning Department III Br. 0433/45 top secret

By order of Hartel, Colonel on the General Staff.

SPEER DOCUMENT 029

Decree of the General of the Signal Corps of March 22, 1945

KR—Teleprint M 1518/45 gRs.

Reich Minister for Armament and War Production,
Reich Minister Prof. Speer
gltf. Chief of the Army General Staff—
Supreme Command—West
Gen. Plenipotentiary for the Reich Administration, Secretary of State STUCKART
Reich Minister for Armament and War Production
Supreme Command of the Air Force Command Staff
Supreme Command of the Navy SKL
Reichsfuehrer SS—Field command post
Reichsfuehrer SS — Fuehrungshauptamt — Commander of Operational Staff
Supreme Command of the Armed Forces/ Chief F. Wi. Amt
Supreme Command of the Army/ Chief WNV
Trp. Chief
For inf. military commander Denmark

Enactment decrees (communications installations) to the Fuehrer order of 19 March 1945.

1. Are responsible—

a. Units of the armed forces for the destruction of their own communications installations,

b. Reichsfuehrer SS for the destruction of the communications installations of the Waffen SS of the depot armies, of the remaining SS, and Police,

c. The Commander-in-Chief of the theater of operations and the Supreme Commands of the Army Groups in the East for the destruction of the communication installations of the Field Armed Forces and the Reich authorities. (RP. RB Reich water ways administration Reich Labor Service (RAD), (OT) (Todt Organization) and electrical overland works) within their territory.

The responsibility for timely preparation and through execution rests with the Senior Reich authorities and their subordinate offices. The Department Chiefs who during the operations can not receive orders from the troops are to be instructed to carry out the demolitions on their personal responsibility. Close cooperation between the Commando authorities, the field armed forces and the locally competent offices of the Reich authorities must be secured.

2. The Commander-in-Chief of the theaters of operation and the High Commands of the Army Groups in the East have at their disposal all necessary forces of the units of the Armed Forces, the subordinate units of the Waffen SS and Police and the personnel of the Reich authorities for the execution of the plan.

3. The communications installations are to be destroyed by blasting, fire or demolition: The telephone, telegram, and amplifier offices and intersection centers, cable installations, switchboards, line and cable branch points, telegraph poles and if there is time enough, also overland wires and cables. The stocks of telegraph construction material and telegraph apparatus of all kind, cable and circuit material, industrial records (cable plans, switch plans, descriptions of tools, etc.) high power radio stations (transmitting, operation-receiving stations, masts and antennae). Efforts must be made to evacuate specially valuable parts.

4. Special orders will follow for the Reich capital and environments, especially the high power radio stations, NAUEN, KOENIGSWUSTERHAUSEN, ZEESEN, REMATHE, BEELITZ.

By order of

[signed]: HEPP, Colonel General Staff

OKW/FST. Chief WNV—No 002922/45 top secret.

SPEER DOCUMENT 030

Letter of Speer to Hitler on 29 March 1945

* * * "When on 18 March I transmitted to you my letter, I was of firm conviction that the conclusions which I had drawn from the present situation for the maintainance of our national power would find your unconditional approval. Because you yourself had once determined that it was the task of the government to preserve a nation from a heroic end if the war should be lost. However during the evening you made declarations to me the tenor of which, unless I misunderstood you, was clearly and definitely as follows: If the war is to be lost the nation will also perish. This fate is inevitable. There was no necessity to take into consideration the basis which the people would need to continue a most primitive existence. On the contrary, it would be wiser to destroy even these things, because this nation had proved to be the weaker one and the future belonged solely to the stronger Eastern nation. Besides, those who remain after the battle are only the inferior ones; for the good ones have fallen.

After these words I was profoundly shaken, and when on the next day I read the order for destruction and shortly after that the strict order of evacuation, I saw in this the first steps toward the realization of these intentions" * * *.

SPEER DOCUMENT 031

Executory decree of Hitler, 30 March 1945

The Fuehrer Headquarters of Fuehrer, 30 March 1945

For unified execution of my decree of 19 March 1945 I command:

1. The ordered measures for destruction of industrial plants serve exclusively the purpose of making impossible the use by the enemy of these plants in order to augment his fighting forces.

2. In no case must the measures adopted weaken our own fighting forces. Production must be maintained to the last possible moment, even when there is danger due to swift movements of the enemy that the plant may fall into his hands undestroyed. Industrial plants of all kinds, including industries of supply, can only then be destroyed, when they are threatened imminently.

3. Where the total destruction of bridges and other traffic installations makes their use impossible by the enemy for a long period, the same result can be obtained by lasting paralysis of industrial plants, including industries of supply. The total destruction of especially important plants will be determined by the Reich Minister for Armament and War Production by my orders

(for instance, munitions works, most important chemical plants, etc.).

4. The selection for paralysis and destruction of industrial plants and other works is made by the Gauleiter and Reich Commissioner for Defense, who supervises their execution. The execution is dealt with solely by the Offices and Organizations of the Reich Minister for Armament and War Production. In this connection all offices of the Party, the State, and the Army are to render assistance.

5. The provision for execution is published with my assent by the Reich Minister for Armament and War production. He can give individual instructions to the Reich Commissioner for Defense.

6. These principles are valid according to their purport for the plants and installations in the immediate fighting zone.

[signed] ADOLF HITLER

SPEER DOCUMENT 032

Pariser Platz 3, BERLIN W 8, 30 March 1945

Executive Decree, dated 30 March 1945

The Reich Minister for Armament and War Production ZA/Org. 372–381/45 secret

SECRET!

Subject: Executive regulations for the Fuehrer Decree, dated 30 March 1945, concerning measures for crippling and destroying.

For the execution of the Fuehrer decrees dated 19 March 1945 and 30 March 1945 I decree:

1. My present decrees and directives concerning the crippling of industrial installations of all kinds and public utilities (electric power, gas, water, food economic enterprises of all kinds) continue to apply as before. The preparations for crippling which have been ordered are to be pursued with all intensity in order to guarantee the execution when necessary in the shortest possible time. These crippling measures must make it impossible for the enemy to use our industrial installations and supply facilities for the increase of high fighting power right now and in this foreseeable future.

I emphasize once more the necessity of absolute secrecy concerning all preparations.

2. Total destruction of the most important installations or their most important parts will take place upon an order by the Fuehrer, which I will have issued. I shall name these plants, along

with the appropriate directive, to the chairmen of the armament commission or sub-commissions.

Insofar as the intermediary authorities should have suggestions for their part, then these are to be forwarded to me as quickly as possible.

3. The time for the execution of my appropriate directive will be determined exclusively from the battle situation. It is only to be issued when an immediate danger of occupation by the enemy exists. In connection with this, I refer to my repeated order "to continue to manufacture even during the most difficult situations until the last possible moment".

Since all these measures are to be executed in accordance with the principle of not weakening own fighting power one moment too soon. I demand that all departments (armament offices and plant managers) show the highest sense of responsibility. Pursuant to the Fuehrer decree, the Party, the Wehrmacht, and the nation have to assist in the destruction itself on request.

4. The execution of the orders for crippling or destruction, delegated by the Fuehrer to the Gauleiters and Reich Commissioners, extends to the territorial limits, and must be effected in coordination with the military command posts according to the battle situation.

5. Since, pursuant to Fuehrer decree of 30 March 1945, concerning the execution of these measures, the armament authorities are responsible even in the immediate combat zone, my decree of 17 October 1944, point 4, corrected on 6 November 1944, is rescinded. Supreme Command of the Armed Forces/ Armed Forces Operations Staff (OKW/WFSt) will give identical orders to its commands.

The military headquarters have territorial jurisdiction for the execution of the crippling and destruction of the combat zone.

6. Within the framework of the territorial execution of these orders, the chairmen of the armament commissions or sub-commissions are responsible for the execution of individual orders for the crippling of factories or their destruction. They can delegate their powers to the armament authorities responsible for sub-areas of their territory.

[signed] SPEER

Official
[signed] GOTTSCHALK
Oberinspektor [Seal]

Distribution:

Highest Reich authorities and Armed Forces Offices according to a special distribution list.

Plenipotentiary General for Reich Administration with duplicates for the Reich Defense Commissioners.
Regierungspraesidenten, Landraete and Chief Mayors
Chief of the Party Chancellery with duplicates for the Gauleiters
Armament Commissioners
Chairmen of the Armament Commissions with duplicates for the Armament Inspectorate.
Armament Detachments.
WKB, LWAE, Rue-Obm., Organization Todt Einsatzgruppenleiter.
Chiefs of the Main Commissions, Main "Rings" and Production Main Commissions
Reich Minister of Communications with duplicates for the General Plant
Directorates and the Reich Railroads Directorates
Reich Food Minister with duplicates for the state farm leaders.
Inter Office Distribution A2

SPEER DOCUMENT 043

Extract from Memorandum from Speer to Hitler dated 20 September 1944

* * * "So now I am confronted by the fact that at the present stage of the war, in which with growing concern one seeks negligence everywhere, the self-responsibility which I built up in industry and in my ministry is being designated as 'alien to the Party', as a 'reservoir of reactionary economic leaders' or even as 'hostile to the Party'." (Remarks by Dr. Goebbels and Reich Leader Bormann)

The task which I have to fulfill is a non-political one. So far I have enjoyed my work, since I personally and my work were evaluated strictly according to professional achievements.

I must assume that this professional achievement is still meeting with approval even today.

I do not feel strong enough to carry out without hindrance and successfully, the technical work to be accomplished by myself and my co-workers if it is to be measured by Party political standards.

* * * * * * *

20 July caused great lack of confidence on the part of the German people. A feeling of insecurity as to whom one could still rely upon, and as to who would stand at one's side with

active achievement and spiritual preparedness, is generally widespread.

It has fostered anew a lack of confidence in the reliability of my large circle of co-workers from industry.

The fact that I was on the Ministerial list of 20 July is probably known since the Gauleiter meeting to every Gauleiter and even a large circle to the Party.

As my achievements are pretty well recognized there is no danger in this. However the conviction that I am being influenced and carried along by a circle which in its composition is reactionary, economically biased, and alien to the Party is comparatively widespread.

I do not believe that the second system which might be applied in our economy— the system of compulsion by Industrial Commissioners, or extensive proceedings and punishment when output is insufficient, can lead to success." * * *

SPEER DOCUMENT 048

Excerpt from the Fuehrer Protocol of August 18/20, 1944

* * * * * * *

Point 8: "The Fuehrer agrees to the instructions we propose for paralyzing instead of destroying industrial or power plants falling temporarily into enemy hands."

XXII. CONSTANTIN VON NEURATH

1. FINAL ARGUMENT by Dr. Otto von Luedinghausen, Defense Counsel

Your Lordship, your Honours:

"Never before has war impressed me as quite so abominable." This is what Napoleon Bonaparte wrote to the Directorate in the year 1799 after the victorious capture of Jaffa—where he had ordered the shooting of 2,000 captured Turks. This statement by one of the men most outstanding in the conduct of war stood for unqualified condemnation, not merely of war as such, but also of all means for the conduct of war considered as unavoidable and permitted at that time. The perception which this word reflects and its ethical condemnation of war were not uttered in vain. As early as the middle of the last century, morally and ethically high-minded personalities made efforts tending to ameliorate and eliminate, some at least, of the horrors of war. The founding of the Red Cross in Geneva was the first result of such endeavors, casting its luminous light afar, the first fruits of Napoleon's word. But I dare to say, this word is, so to speak, also the actual hour which gave birth to this present trial. It, too, was caused and dictated by the aspiration, not only to circumscribe war as regards the manner in which it is waged, the independence of selection of means and actions, but beyond that to find means and ways to eliminate war as a political measure altogether from the relations of the peoples. It strives for the same high goal, to create an international law to govern all peoples of all States, as they live alongside and together, and to which all States and peoples who wish to rank as civilized States will submit and by which they will be forced to abide in the same manner as the individual national of a State must abide by the law his State has established for the common existence of its people. And if you, your Honors, and if the entire world will learn to understand how infinitely painful it is for us Germans that it is just our State and our people who have furnished cause for the creation of such international law by a war in which we were engaged, yet my client, the defendant von Neurath, and I could not help but welcome the attempt inherent in this trial, because the highest effort during the entire official activity of my client, from his first day in office to the last, was the endeavor to avoid war and to serve peace. And I do not hesitate to emphasize this, although it is because of an entirely new principle of law that my client is facing this Court. Because for the first time in history the idea is to be carried into practice according to which this or those statesmen of a nation are to be held personally responsible and be punished for the wars of aggression caused by them, and the inhumane and cruel means therein applied. This thought, which this High Court is about to carry into practice as a principle of law, is absolutely novel in the history of international law. But if the present Court Trial and the Charter on which it is based is to be more than a single procedure, worked out and intended for this one case, in other words for this war just ended; if it arose not merely from the thought of vengeance because of harm and damage done to the victorious nations and is intended to atone for them, but if it really was brought forth by the will and the decision to eliminate war in itself for good, through the stipulation of the personal responsibility of the statesmen of the nations, then this constitutes a deed which the sincere conviction of every peace loving person will welcome. It furthermore contains two elements apparently suited to revolutionize all that was heretofore known in this world for handling and directing the foreign policy of States, and to raise it onto a new and undoubtedly higher ethical basis.

It has been an anciently established postulate for the policy of a statesman and his rating before history—which has been so since the speech made famous by Pericles and since Plato's State doctrines, making it the foremost, I would almost say the only postulate—to exert every endeavor to obtain for his people, for the State under his stewardship, the highest possible level of existence, of maintenance, and improvement of its standard of living, of its position among nations, irrespective of the means it might require. Every nation on earth includes in its history statesmen who, seen in this light, are being extolled and honored as shining examples, and who went down in history as such merely because they were successful, and without testing whether the means used by them to obtain success were in harmony or not with the ethical principles not only of the Christian but of all high-ranking moral philosophies. To this maxim the Charter of this High Tribunal opposes a new maxim in that it stipulates that every war of aggression places culpability on the person responsible for the war, without regard for the question of success or failure in the war. However, this means nothing else but subjection to the moral law—which rejects application of force of any kind as a means of policy—of every state stewardship, even the most successful and the most victorious. If, however, this is to have practical meaning and success, there follows the subjection of every State stewardship to the test and judgment by all other civilized States in the world. On that principle the Charter established by this High Tribunal would call for the testing and possible judgment of all innerpolitical measures which, in retrospect, might be seen as actions of preparation for this war. To discuss consequences resulting from this would lead too far; this must rather be left to discussion by scholars of State Law and to further developments, and I wish therefore to confine myself to pointing to one consequence only, that consequence that the statesmen involved in the war of aggression—through planning, preparation, and carrying through of a war of aggression— will be subject to such judgment of a future International World Court and with it liable to punishment, even in the event of that war of aggression ending in victory. Perhaps this is the main point, reflecting the highest ethics of the stipulations and principles established in the Charter.

If I particularly stress these factors this is not done because my client or I entertain doubts that the framers of this Charter failed to be equally and fully aware of these consequences. But the fact that this new tenet of international law is to find application for the first time in the World Forum and by the Allied Governments not through a power dictate but through a Court procedure equipped with all reservations for objectiveness and impartiality, wherein my client and I see proof of the fact that this Court procedure was born and is being motivated by the ideal aspiration of mankind to free it from the scourge of war.

And even if my client and I myself in no way fail to recognize the important issue in this trial as based on the Charter, namely that in sharp contrast to the principles of law of all democratic States, of every democratic-liberal principle of law, it proposes to pass judgment on and inflict punishment for many actions for which at the time they were committed there undeniably did not exist a law or a precedence governing them, my client and I nevertheless are confident, because of our conviction that this High Tribunal will not base the establishment of its verdict on individual and incoherently united actions, on single bare facts, but that it will scrutinize and examine with particular care the motives and aspirations which moved each individual defendant. If then you, Your Honors, will establish, as I am convinced you will, that from the first to the last day of his official activity, as Reich Foreign Minister or as Reich Protector, my client was moved by one desire only, all his deeds and actions governed by one aspiration, to prevent a war and its cruelties, to maintain peace, and that the very reason for his remaining in office was to prevent through his influence war and its inhumanity, and that he did not withdraw from his post until he was forced to conclude that all his efforts were vain, and that the will and determination of the highest ruler of the State, Hitler, to war were more powerful than he. In that case the fact of his membership and continuance of office in the Reich Government until that moment cannot possibly be construed as approval, much less as assistance and co-partnership in the planning, preparing, or waging of war, thereby placing upon him joint-responsibility for the war, or even for cruelties and atrocities committed during its course. By reason of the very fact of the application, in international law and in Democratic States—an application made for the first time in this trial—of the legal doctrine that an action already committed can subsequently be made punishable by law, results in the imperative demand that the question of the subjective guilt of the defendant, in other words the consciousness, not only of the amorality and the presumed criminality of the deed in question but also the intent to commit the deed or at least to offer active assistance despite such awareness, be examined and answered before a verdict is arrived at. Disregard of this postulate would not only rob this trial of its high ethical importance, but would open wide the door and gate to arbitrariness, making such Court procedure appear before the world, not as a real Court within its truest and profoundest meaning, but making it a power dictate wearing the robe of justice.

An extraordinary responsibility is thus placed upon your shoulders, so great as has never before been placed on the shoulders of any Court in the world. Carrying out the will and the vision of the father of this trial, President Roosevelt, who too early passed from this world, it is your task, Your Honors, to lay the first corner stone for the temple of peace of the nations of the earth. You are to build the foundation for the attainment of the ideal he envisaged, perpetual peace. On your judgment coming generations are to continue to build. You are to give the directives according to which those who come after us must continue to aspire to this high goal. It is not a precedent you are to establish, not an individual case you are to judge and to punish the guilty men according to your judgment; but you are to lay down the fundamental principles of a new international law which is to govern the world in the future. This alone, this task assigned to you, establishes the meaning of this Tribunal, its justification, and its high ethical inspiration, to which we yield. At the same time, however, this also includes the recognition that the verdict to be established by you in regard to these defendants is not a verdict in the ordinary meaning of the word; it is not merely a judge's sentence pronounced on behalf of individual defendants and their deeds, but it is the new fundamental law itself, the source from which all future Courts are to draw in accordance with which your verdict is to be established.

It is therefore your task, Your Honors, to interpret the provisions of the Charter according to their principle, and to establish in practice and for all time to come, the rules and principles of the Charter. The responsibility which you thereby assume before history gives you two questions to answer, which answer is all the more complicated because the legal concept of conspiracy incorporated in the Charter and forming the legal foundation of the indictment is a concept foreign not only to the majority of peoples, especially the European peoples, but also because in one or the other country it owes its existence to its previous application to the combat against common crimes and offenses against the legal provisions governing domestic affairs and those alone. The postulate necessarily follows that the modus of interpretation and application of this legal concept in international law can and must never be the same as employed in the fight against common bands of gangsters, guilty of a breach of the social order of a particular country and of the laws promulgated for its protection. The latter ordinarily involves individuals of a more or less amoral disposition, who act for reasons of selfishness, lust for money, or other unethical instincts, placing themselves outside the existing social order. In the last analysis, however, and particularly when wars of aggression are involved, international law does not deal with individual statesmen but much rather with whole peoples. The age of absolutism—where the will of the ruler determined alone the destiny and acts of a people—has definitely passed. In this age it may be said that no avowed dictator, no omnipotent despot who can rule without or against the will, or at least the tacit approval of the nation, at least its majority, is conceivable. And so—it is necessary to make this known once to the world—invisible behind the defendants there sits also in the prisoners' dock our poor, beaten, and tortured German people, because it placed upon a pedestal and selected as leader a man who led it to its doom. From this follows of necessity the inescapable demand that contrary to the concept of conspiracy applied in regard to ordinary criminals, application of the concept of conspiracy applied in international law must firstly proceed by investigating and examining how it came about—how it could come about—that a people ranking high intellectually, a people who gave so much to the world in terms of gifts of culture and of mind as the German people did—that it could hail a man such as Hitler, following him into the bloodiest of all wars, giving him its last and best. Not until you, your Honors, have incorporated this in the field of your considerations and examined this question will you be able to establish a just verdict in regard to the individual defendants themselves—with due consideration for their dissimilarity—a judgment which will stand the test of history. Because of such reasoning and not merely by reason of my right as defense counsel of the defendant Freiherr von Neurath, but also because of my duty as a German, I deemed it necessary to explain in mere outline the fact of Nazi domination which the world outside of Germany cannot grasp, to make you visualize how it happened as a result of the effects of the Versailles Treaty and, finally, because of the manner of its application, how it was bound to happen, true to historical necessity.

In view of the short amount of time made available to me through decision of the Tribunal, I must refrain from reading that part of my final pleading, and express my definite hope that the Tribunal will go to the trouble of subsequently reading it itself and that it will consider its arguments when establishing its verdict. I now continue with page 44 of my final pleading, and should first of all like to give you a brief description of the personality and of the thoughts and feelings of that man who is today before you as prisoner.

[At this point, material was omitted voluntarily by Defense Counsel.—Ed.]

Born as a scion of an old family which gave its small country of Wuerttemberg so many faithful high government officials, he grew up with a simple and strict education in a parental home filled not only with a real Christian spirit and true love for mankind, but also with a flourishing, devoted love for his German people and Fatherland. From his tenderest age and during his whole life his thoughts and actions had implanted in him the desire and will, the holy duty, to place all his powers, all his ability, all his gifts and capacities at the service of the welfare of his people, to subordinate and even sacrifice all his personal interests to this. But, and this must certainly be emphasized in this place, aside from this aspiration there was alive in him and woven into his being to an equally strong extent a deep religious feeling, love of the truth and love of mankind that made him from the beginning adverse to the use of any form of violence, not only in his private life, in his relations with his fellow men, but which ruled rather to the same extent his entire official activity, even after the treaty of Versailles. His acts bore the stamp of this feeling and it became the law governing his official dealings as representative of the Reich in other countries, as well as Foreign Minister and lastly as Reich Protector of Moravia and Bohemia. Not only by his conciliating amiability, his commanding appearance and demeanour, so understandable in a man of his origin and education, but also primarily through the love of peace and sincerity which permeated all his actions as à diplomat and statesman he won the unlimited and sincere respect and sympathy of all the people he came into contact with the world over, even of his political opponents. As an unequivocal proof of this fact, the truth of which, your Honors, may be confirmed by your own diplomats, it will suffice to refer to the fact that, as you know from the sworn affidavit of my client, no less persons than King George V and King Edward VIII of England received the defendant in private audiences upon the occasions of his presence in London in 1933 and 1935, that the British Government in the summer of 1937 and again in 1938, when he was no longer Foreign Minister, invited him to visit England for political discussions, and lastly that on his 65th birthday on 2 February 1938 the entire diplomatic corps called on him to congratulate him and to express through the then dean, Monsignore Orsenigo, its thanks and its appreciation for the reasonable and understanding manner in which he always discharged his duties. Do you, your Honors, credit your own diplomats and statesmen with so little knowledge of human nature, so little experience and knowledge of the world that in the course of the defendant 6 years' activity they would not have found out, if the assertion of the Prosecution were true, that Herr von Neurath had knowingly let himself and his good reputation be used as a covering shield by the Nazis, and that all his statements and assurances as Foreign Minister were more camouflage, that is to say, a deliberate deceiving of the whole world? In this connection, it may well be pointed out as quite obvious that such old and experienced democracies as England, America, France, as well as the Vatican, had delegated to the then very important post of Ambassador in Berlin their cleverest and most experienced diplomats. And I attempted to assume that the Prosecution possibly did not realize quite clearly what a dubious compliment it paid to its own diplomats by its assertion about the defendant, while it produces in proof of said assertion only the highly fantastic report of the American Counsul Messersmith. I am moreover unshakeably convinced that you, your Honors, based on the very reason of your long judicial experience, have far too much knowledge of human nature not to see at first glance that my client by his entire personality is absolutely incapable of such a perfidious and lying way of acting, let alone capable of play-acting to such an extent that for six long years he could have fooled the ablest and most experienced diplomats in the world. A man who for 60 years has led an honorable and absolutely decent life, like the defendant, would never in the world at the end of such a life have lent himself for such a disavowal and negation of all that he had so far held highest. That would be contrary to anybody's personal experience.

And on the same level stands the Prosecution's assertion that the defendant von Neurath, by joining and remaining in Hitler's cabinet, served as a fifth columnist in the conservative circles of Germany, for the express purpose of winning them over to National Socialism. This slander of the defendant, which moreover was brought forward without any attempt at justification, is contradicted by the sworn statements of all witnesses and the affidavits submitted, which unanimously tend to prove that the resignation of the defendant from the office of foreign minister was viewed in just these circles with the greatest dismay and concern, because these circles considered that this withdrawal of the defendant from the government was in itself a sign that from then on his pronounced peace policy would be replaced by another, more belligerent, tendency in foreign policy, which was quite rightly considered as a national calamity. For, like everybody else, they shared the conviction of Reich President von Hindenburg, that Mr. von Neurath was the exponent of the peaceful foreign policy of the Reich and the guarantee for a consistent continuation of this peace policy, and was against any possible, undesired aggressive experiments by Hitler and the Nazi party and that for this reason the Reich President had made it an express condition that the defendant should remain in the Cabinet as Foreign Minister when Hitler was called to the Reich Chancellery. This fact is confirmed beyond doubt by the sworn statements of all the witnesses heard, as well as by the carbon copy submitted by me of the letter of the witness Dr. Koepke on 2 June 1932 to Ambassador Ruemelin (*Doc. Book I, No. 8*), and the affidavit of Baroness Ritter (*Doc. Book I, No. 3*). But the latter proves also at the same time how unwillingly and after how long a struggle the defendant finally decided to accept this call and therefore supports the defendant's own sworn statement, that he only decided to do so after the Reich President whom he so highly venerated, appealed to his love of country and reminded him of the promise he had made two years before not to leave him, the Reich President, in the lurch whenever he needed him. There is certainly no need for further proof for the utter groundlessness and inaccuracy of the further assertion of the Prosecution, also submitted without proof, that the defendant had used his position, his reputation, his connections, and his influence to lift Hitler and the Nazi Party into the saddle, to help them to secure supreme power in the Reich. Therefore, I hardly need to refer again to the statements of the defendant Goering and other witnesses, particularly Dr. Koepke, from which it appears beyond doubt that at the time there were absolutely no relations between Hitler and the Nazis and the defendant, and therefore even less could the defendant have taken any part in the negotiations which took place before Hitler's call to the chancellorship. Love of his country, deepest concern over the weal and woe of his people, and his promise not to leave Reich President von Hindenburg in the lurch in this time of need were the only reasons which moved this man to leave the post of Ambassador in London he had come to like so much, to assume at that critical and fateful hour the heavy charge of Foreign Minister of the Reich, and the task assigned him as such by the President of the Reich to continue the guidance of the foreign policy of the Reich in peaceful ways, even eventually against the will of Hitler. The defendant von Neurath can claim fully and rightly that he carried this heavy task at all times, even after the death of Reich President von Hindenburg, with all his strength and with the pledging of the full force of his personality. Up to the time he was forced to admit that this task was beyond his strength, that Hitler no longer let himself be influenced by him but had decided to pursue a line of foreign policy along which the defendant, owing to his inmost convictions and his personal point of view, could not follow.

Up to 5 November 1937, the date of the famous speech of Hitler to the commanders of the various branches of the Wehrmacht, the defendant von Neurath remained at his post, in the most faithful performance of his promise to the Reich President von Hindenburg, even after the death of the latter. Out of this faithfulness to the dead Reich President he has assumed the odium in many cases concerning Hitler's home politics of having been compelled as a member of the Reich Cabinet to allow in silence things to take place which were contrary to his own convictions, did not agree with his views, and were in direct contradiction to them. It was not in his power to prevent them. So he was forced to be satisfied with trying as far as was possible to mitigate their effects and consequences, as you could see from the Affidavit of Provincial Bishop Dr. Wurm *(Doc. book I, No. 1)*, and the statements of the other witnesses heard in this connection.

The reproach of the Prosecution, that he did not make such cases an excuse to lay down his office of Minister, but that through his remaining in office he had consciously approved and abetted, is entirely irrelevant. The first law governing his action was the carrying out of the duty assigned him by President von Hindenburg to secure the continuance of the Reich's peaceful foreign policy. He would have considered himself false to his word if he had resigned his post of Foreign Minister before this was accomplished or before there was no possibility of its accomplishment. What person thinking objectively could bring himself to reproach him regarding this or even, as does the Prosecution, identify him with the Nazis.

But this attitude of the defendant, however, is the only reason why he did not refuse, as did the Minister Eltz von Ruebenach, his nomination to the rank of Honorary "Gruppenfuehrer" of the SS in September 1937 and the presentation by Hitler of the Party badge in gold at the Cabinet Session of 30 January 1937, which facts are made a reproach by the Prosecution into a reproof and a proof of his alleged National Socialist sentiments. For, as the statement of the defendant Goering concerning the latter, such a refusal by the defendant von Neurath, as was the case with Eltz von Ruebenach, would have been resented by Hitler as an act of rudeness which would without any hesitation have been answered by the immediate dismissal of the defendant. But it was just this that the defendant wished to avoid, for at that time he was still in a position to carry out to the full extent the task assigned him by the President of the Reich, to be the guarantor of peace in the foreign policy of the Reich because he was fully justified in his conviction that his influence over Hitler was still strong enough to insure his agreement with the peace policy he was then fostering. The evidence submitted proves beyond doubt that in both cases it was not a question of actual membership of the SS and the Party, but in the first case it was only a matter of uniform, an external vanity of Hitler in regard to the men of his retinue during the impending visit from Mussolini; and secondly that it was a matter of a visible recognition for the services rendered by the defendant as Foreign Minister, which at the same time implied a proof of the unlimited agreement of Hitler with the peaceful foreign policy followed by the defendant, in other words, an entirely normal awarding of decorations as is practiced in every State. The conferring of decorations in the ordinary sense was not yet possible, because at that time they did not yet exist in the Third Reich. That the defendant in both cases nevertheless expressed at once that under no circumstances did he wish to prove his entry or admission into the SS or the Party by accepting this investiture intended by Hitler as a mark of honor has been proved by the affidavit of the defendant.

Moreover, he never took the oath required to become a member of the SS; he never exercised even the slightest activity in the SS and wore the SS uniform only twice in his life at Hitler's explicit request. This has also been confirmed by his affidavit. Both cases actually concerned a personal sacrifice of the defendant made to the promise which he had made to Hindenburg. If the Prosecution consequently believes it must infer a National Socialist conviction, the defendant's agreement with Hitler's ideas and his entire governmental system from both these events, it is altogether off the track. And the conferring of the Order of the Eagle supports the Prosecution's assertion even less. For this Order was not conferred on him as well as on the defendant Ribbentrop as a personal distinction for services rendered, but it was merely valid for the position of the Reich Minister of Foreign Affairs and for that of the Reich Protector as such; this was done in order to give this Order, which was intended to be conferred on foreign personalities only, a special significance in the eyes of people abroad, which is even shown by the fact that it had to be returned when he left. The presentation of evidence, through the affidavits of all the witnesses examined in this connection, unequivocally resulted in the fact that the defendant's attitude towards the National Socialist system and its maxims was negative from the beginning to the end, and that therefore certain Party circles continually bore him ill-will and opposed him. For these circles knew quite well that the defendant von Neurath, as is proved by his own statement and by those of the witnesses Dr. Koepcke and Dr. Diekhoff, energetically and successfully opposed to the last day all attempts to introduce members of the Party as officials into the Ministry of Foreign Affairs, and in so doing open it up to Nazi influences; and that in spite of various intrigues he could not be dissuaded from definite peace policy. The defendant also took upon his own shoulders this enmity and these intrigues from his inviolable sense of responsibility and his patriotism endeavouring only to steer German Foreign policy into those channels, which were alone the right ones according to his convictions, formed by long years of most successful diplomatic activity. He was fully convinced that when he resigned his office it meant the collapse of the last bulwark against the infiltration of members of the Party and of the Nazi spirit into the Reich Ministry of Foreign Affairs; it also meant that the danger of the renunciation of the peace policy embodied in him became threatening, as happened immediately on his resignation on 4 February 1938.

It was therefore for the defendant one of the most grievous, perhaps the most grievous, disillusionment in his official life, when he was forced to recognize by Hitler's speech on the ominous day of 5 November 1937 that all his efforts, his entire struggle, all his personal sacrifice in the last 5 years appeared to be in vain, and his influence with Hitler was broken; that the latter had decided to abandon him and the policy of peace and agreement advocated by him, and, if the occasion arose, to make use of military means in order to carry out his more than Utopian plans and intentions set forth in this speech. The acknowledgment struck him like lightning from a clear sky, since up to then nothing had intimated that Hitler might no longer agree on the peace policy advocated by the defendant. The heart attack which he had the next day may testify to the fact how seriously he felt his blow, which seemed to shatter all his hopes, all his efforts to protect Germany from the dangers of this foreign policy, the military entanglements, and a possible if not probable catastrophe. But from his consciousness of responsibility, his burning concern regarding the future of his people, before drawing upon himself the last self-evident consequences and resigning, he considered it his duty to try once again, by very detailed and serious conversations, to dissuade Hitler from persevering in his fatal plans and intentions. Yet, having to recognize from this conversation, that Hitler's decision was unalterable, he did not hesitate for one instant to tell Hitler that he had decided under no circumstances to take part in this pernicious policy and that for such a foreign policy Hitler must find another Foreign Minister. Hitler accepted his resignation by his letter of 4 February 1938.

I ask you, Gentlemen, is there a more unequivocal and clearer proof than this resignation, for the absolute inaccuracy, the entire instability of the charges made against my client at this trial of having assisted or wished to assist by his foreign policy in the planning and the preparation of wars of aggression which took place 1½ years later? Is there a more unequivocal and clearer proof of the absurdity of the application of the principles of conspiracy to the acts and deeds of statesmen and in particular of the defendant? Finally, is there a more unequivocal and clearer proof of the absurdity of a retrospective judgment of the policy of States, such as they constitute here one of the main bases of the whole Prosecution?

All of you Gentlemen, who are here to do justice, know from your own activity and experience at least as well as I do, how dangerous conclusions a posteriori are regarding the actions of a man, regarding the thoughts, views, and deeds of this man at a time going back several years. Tempora mutantur et nos in illis. Each of us has surely, more than once in his life, experienced the truth of this sentence. Convictions and views, intentions and resolutions, which we have held and carried out at a certain time, have in the course of years become changed and altered, partly because of the transformation of one's own personality, partly because of exterior circumstances of change of conditions. Does one really wish to expound this thesis and draw conclusions retrospectively, that the former views, assertions, and actions were only camouflage, and that the person already intended to do and was determined to do, what he did years later under quite different circumstances? Why should you demand a different standard of a politician, a statesman, he also is only a man and is subject to the same changes of ideas, opinions and intentions, as any one else. He is even more subject to exterior influences, exterior conditions so certain imponderable circumstances than the ordinary man. Just one example for this. What would you say to a man who would earnestly dare to assert that Napoleon Bonaparte, when he went to Paris during the great Revolution, or later on when taking over the supreme command of the French armies in Northern Italy, already had the idea or even the plan or the intention of making himself in 1804 Emperor of the French and of marching on Moscow in 1812? I believe whoever adopted this attitude would stand alone in the world. And an able dialectician with more or less apparent logic and right could still base this opinion on the historical development of events, like the Prosecution with regard to their opinion that Hitler, at the time of his assumption of power, yes, already with the presentation of the Party program in 1920, had not only the intention but even the plan ready for conducting his later wars of aggression, and everything which Hitler and the Nazis and/or his collaborators did, from the moment of the assumption of power, both in domestic and foreign politics, was the conscious preparation for these wars of aggression.

Your Honors, I believe whoever follows the Prosecution and its principle, which still stands on a very weak basis, and its retrospective consideration of things esteems too highly probably not only the spiritual, but also the statesmanlike abilities, not only of his satellites, but also of Hitler himself. Because, after all, it is in any case already evidence of a certain mental limitation, if a person, and particularly a statesman, founds his policy on the basis, as Hitler indisputably did, that the governments and statesmen of the remaining States would again and again let themselves be fooled and bluffed, that they would again and again stand for actions which they considered to be violations of treaties, and that they would watch quietly until Hitler believed himself to be so far as to be able now to attack almost the whole world by force of arms. And is it not all the more proof of a mental limitation, if a statesman in this way underestimates the abilities and cleverness, but also the power instruments of his opponents as Hitler has done? In addition to all this, however, there is something which must not be underestimated either, that is, the violence of the sudden transition of the thoughts and the decisions resulting therefrom which was a trait of Hitler. I do not consider it necessary to have to give you any further evidence thereof, they are generally well-known. Hitler, however, was also a man who did not stand for any argument, or any resistance, and who, when he encountered such and met obstacles which he could not remove through an emphatic word, changed his plans and intentions like lightning and let himself be led to decisions which were frequently just the opposite from what he had wanted, planned, and done previously.

All this speaks against the intention of the planning and the preparation of wars at the time of the seizure of power, and even already in previous years which the Prosecution has ascribed to Hitler. The impossibility of this charge is yet underlined, if the following is considered: To this Hitler has not only indisputably testified in public speeches, addresses, and diplomatic notes on several occasions from the day of the seizure of power until 1937, as can be seen from documents presented by me, but he has also made positive suggestions for the practical execution of the limitation of armament of all States, therefore also that of Germany, from which it can be indisputably seen that, with regard to the German Armed Forces and its strength in relationship to the armament of the Western Powers, he declared himself satisfied with a relationship, which from the very beginning excluded any aggressive war against the other States. And now just suppose that one of these offers of Hitler had been accepted by the remaining States, then the war of aggression which Hitler supposedly had been planning and preparing for years would never have been possible. All efforts, work, and expenses in connection with it would have been in vain. Or do you perhaps consider it probable that Hitler looked ahead and figured that his offers would be refused, and that he only made them in this realization? Then he would really be an almost demoniacal genius, a prophetic seer of the first rank. Do you really wish to presume this and to affirm from it the claim of the Prosecution of the planning of the aggressive war in the year 1939 already a long time before the seizure of power? And even if you should answer this question in the affirmative for the person of Hitler, do you also ascribe such a gift of second sight to his collaborators, his servants, yes even all Party members? To ask this question is to answer it in the negative. With this question alone also falls the whole painfully constructed and artificial construction of the motivation of the Prosecution. And along with it falls also the classification of the whole charge, and in particular the co-responsibility of all collaborators of Hitler generally under the conception of the conspiracy, at least until the period of time when it could be recognized by the most extensive circles of his followers, that Hitler finally wanted war and had decided on it. Simultaneously with this, however, the unvarying correctness of the postulate advanced by me at the beginning of my statements, after examining the subjective co-guilt of every single defendant, after the refusal of the co-responsibility of each individual only from the fact of his participation in the actions which are considered as preparation for a war of aggression by the Prosecution at any period of time, simply without examination and investigation of his knowledge of Hitler's aims and intentions, becomes evident.

To waive and disregard this postulate, as the Prosecution does, would be to contradict every sense of justice, the most primitive as well the most highly developed, in every nation on earth. The "summum jus" sought in this trial would become a "summa injuria".

The best evidence of the truth of this assertion is personified by the defendant von Neurath himself. Is it not pure folly, is it not "summa injuria" to accuse this man of connivance in planning and preparing wars of aggression; this man who deemed it his exclusive duty, a duty to which he has made many a personal sacrifice, to prevent every form of entanglement involving war; and who, the moment he realized that the task was beyond him, forthwith resigned his function and demanded his dismissal? The Prosecution obviously feel this themselves, otherwise they would not have brought, as evidence of the defendant's alleged joint culpability, his presence at Hitler's conference on the 5 November 1937, wittingly omitting however, that it was this conference and Hitler's deviation from a peace to a war policy which determined the defendant to refuse further collaboration and thereby make it clear that he has never concurred in the past and is not prepared to concur in the future in, or approve of, the planning, preparation, or waging of a war of aggression. Thus, every charge of guilt made in the Indictment against defendant von Neurath is originally void, once and for all. For should he be further accused of having broken international treaties while responsible for the conduct of German foreign policy, it must be pointed out, in answer, that according to the clear wording of the Charter, the breach of international treaties does not constitute a punishable crime in itself, and becomes a punishable crime only when it serves the purpose of preparation for wars of aggression. If such a breach of treaty serves this purpose, it must be intended to do so by its author, or at least its author must have conscience of the fact. That defendant v. Neurath had no such intention nor indeed the faintest conscience of the above implication is quite clearly proved by his resignation from the office of Foreign Minister. But I shall moreover demonstrate to you that even the charge of violation or breach of international treaties is without foundation.

When, on 2 June 1932, defendant von Neurath took over the Foreign Office at Hindenburg's request, there were two questions that far surpassed in importance every other European problem and awaited an urgent solution; they were the problem of the German Reparations and the problem of the disarmament of the victor Powers and of German equality of rights, inseparable from it. The first question, the defendant and the then Reich Chancellor von Papen managed to conduct towards a satisfactory solution at the Conference held by the Powers in Lausanne on 10 June 1932 a few days after the defendant's assumption of office. At the closing session of the Conference on 9 July 1932, Germany was acquitted of the financial servitude established by the Treaty of Versailles against a single final payment of 3 milliard marks. The Young Plan was obsolete, and only Germany's obligations deriving from the loans granted her remained in force. Thus came for Germany the political achievement that Part VIII of the Treaty of Versailles, in which the Reparation obligations were contained in virtue of article 232 became obsolete.

The first breach was made. Matters differed as regards the disarmament problem. This arose from the obligation for disarmament imposed on Germany according to part V of the Treaty of Versailles which, I presume, is well known. In case of its fulfilment, the preamble to this part likewise prescribed disarmament for the highly-armed victor nations in reciprocity. Germany had disarmed; it had already fully met its obligations in 1927, an uncontested fact which the League of Nations also had expressly recognized. This was the basis for Germany's request for reciprocal compliance by the other partners to the Treaty, as provided in the Preamble to Part V. And Germany had announced its request for disarmament by the highly-armed States and in conjunction therewith recognition of her equality of rights a considerable time before the defendant took office. However, during the so-called Disarmament Conference the negotiations not only had made no progress by the time the defendant took over the Foreign Office, but just at that time, the summer of 1932, they had become considerably more difficult. In view of the short time allotted for my disposal, I again refer for details to the German Memorandum of 29 August 1932 *(Doc. Book II, No. 40)* and to my client's interview of 6 September 1932 with a representative of the Wolff Telegraph Office, to be found in the same document book under No. 41. Lastly, I should like to refer to the defendant's declaration of 30 September 1932 before the German Press, submitted to the Tribunal under No. 45, my document book II. These declarations, all of which were made preparatory to the resumption of negotiations by the Disarmament Conference on 16 October 1932, and in order to demonstrate the seriousness of the situation to the world and to the Western Powers, prove clearly and unequivocally the great, fundamental tendency of the defendant's ideas, his trend of thought and the intentions as a human being, as a diplomat, and as Foreign Minister which dominated his entire policy from the beginning until his resignation, and which can be summarized in the statement, "to avoid and prevent the settling of differences through force of arms; to realize all goals and tasks of German Foreign Policy by peaceful means only; to reject war as a means of policy; in a word, to strengthen and safeguard peace among the nations." It is the same tendency which M. Francois Poncet, the former French Ambassador to Berlin, so succinctly referred to as a characteristic of the defendant in his letter which I submitted to the Tribunal as per No. 162 of my Document Book V and which was unanimously confirmed by all witnesses and affidavits. While the opening of negotiations at the Disarmament Conference expressed what really might be termed an affront to Germany which caused the head of the German Delegation to declare that under such conditions it would not be possible for him to continue to attend the negotiations, the Western Powers in the end could not close their minds to the ethics of a policy inspired by such tendencies and, following a suggestion by the British Government, on 11 December 1932 the conclusion of the known Five-Power Agreement was brought about *(see Doc. Book II, No. 47 a)* in which England, France, and Italy, with the admission of the United States of America, recognized Germany's equality of rights. On 14 December 1932 the Main Committee of the Disarmament Conference expressed its pleasure in taking cognizance of this agreement and the German Delegate expressed his readiness to resume participation in the deliberations of the conference, stressing also that the equality recognized on 11 December 1932 in regard to Germany was the condition "sine qua non" for this continued participation by Germany. It seemed that a great step forward had thus been made in the path leading to an understanding on the question of disarmament.

However, things were to take a different turn. Immediately following the opening of the conference meeting again in Geneva on 2 February 1933, serious clashes occurred between the German and the French Delegation, in the course of which M. Paul Boncour, the French Delegate, even went so far as to declare the Five Power Agreement of 11 December 1932 legally invalid because it involved five powers only. To the astonishment not only of Germany, the cause for those increasingly acute differences was the fundamental change in France's attitude as regards the basic question of the entire armaments problem as laid down in the French Plan of 14 November 1932 as a basis for these negotiations. Contrary to the stipulations of the Treaty of Versailles and its own attitude heretofore, France suddenly took the position in this plan that armies made of professional soldiers with a long period of service were aggressive in character and, consequently, meant a threat to peace and that only armies with a short period of service were defensive in character. I regret that for a lack of time I must desist not only from reverting at greater length to the details of the French plan but also to the sequence of the differences which became constantly more critical between Germany and the other Powers. Rather must I presume that they are known and confine myself to stressing that the new French thesis, which the Disarmament Conference adopted as its own, was clearly and unequivocally directed against Germany and the Reichswehr as it had come into being in accordance with the disarmament provisions of the Treaty of Versailles, a thesis which if it was to be carried into effect would have required the transformation of the Reichswehr into a militia army with a short period of service, thus signifying a still further reduction in its armament, inadequate as it already was for an effective protection against attack. The establishment of this thesis, however, also proved clearly that France was unwilling to disarm, which was also shown by the statements of the French representative himself. This new plan of France, just as also her attitude particularly in the question of the ratio in the reciprocal reduction of the individual armies, was merely a new expression of her old thesis, first security, then disarmament, which brought about the failure of not only the previous negotiations but also that of a new plan of mediation, the so-called Mac Donald plan, proposed by England to prevent the threatening break-down of negotiations. Germany's reference to consideration for her own security and her demand for general disarmament as a result of the right to equality by reason of recognition accorded her on 11 December 1932 were received by the other parties as presumptive; indication being given that should negotiations fail, responsibility would rest with her. In the interest of the clarification of these things and of the presentation of the increasing gravity of the whole situation before world publicity, my client felt it necessary to publish in the well known Geneva periodical "Voelkerbund" on 11 May 1933 (*Doc. Book II, No. 51*) an article in which he discussed the result which the conference had so far achieved, described the German attitude in detail, and finally established that the German demand for the practical realization of the equality of rights of Germany by disarmament of the heavily armed countries was wrecked by the lack of will of these countries to disarm, and that therefore Germany in the interest of her own security was forced to start completing her armament, should the general limitation and disarmament within the frame work of the English Mac Donald plan not satisfy her justified demands for security.

This conclusion was wholly justified in view of the entire foreign political situation at that time. These aggravated events which had intensified the crisis at the Disarmament Conference were only a small part, so to speak, of the expression of the international tension which prevailed since Hitler's assumption of power. Domestic events occurring in Germany were first observed abroad with astonishment but also with a certain lack of comprehension. Soon after Hitler had assumed power on 30 January 1933, an opinion was formed abroad, the discussion of which would lead too far here about the so-called German Revolution, which made it appear a European danger not only in France and in her allied countries, but also in England.

The fear of such a danger affected the attitude of the Western Powers at the Disarmament Conference to an ever increasing degree, where Germany's completely logical and consistent point of view was regarded as provocation. But these worries of theirs, their insecurity in face of the new Germany, led to even much more extensive measures and threats. With England's consent France began military preparations in the first days of May 1933, placing the border fortifications, which had already been provided with increased garrisons during the winter in a state of alarm, alerting the large camps in Lorraine, the deployment area of her army of the Rhine, and carrying out a large trial mobilization between Belfort, Muehlhausen, and St. Ludwig, at which the Chief of the French General Staff, General Weygand, appeared in person, and at the same time the French Foreign Minister Paul Boncour ostentatiously declared in his speech on 12 May 1933 before the French Senate that, in view of the revolutionary explosions in Germany, Italy would have to be kept firmly among the group of Western Powers; and, in response to Germany's attitude at the Disarmament Conference, he added that Germany must adhere strictly to the Treaty of Versailles if she wanted to keep the Reichswehr. And these words of the French Minister, which could only be understood as a threat, were still further emphasized and confirmed by similar statements of the British War Minister Hailsham and the otherwise so pacifist minded Lord Cecil in the English House of Commons; the latter even encouraged France to carry out further military operations. The situation was so strained that Europe seemed to be standing directly on the brink of a new war.

This increasing gravity of the situation, this obvious crisis which was leading Europe close to disaster, is one of the basic reasons for the entire subsequent policy of the defendant von Neurath during the following years. Therefore, the question must be examined as briefly as possible to see what consequences it was bound to have, and did have, for German foreign policy, from a German point of view. One thing is undeniably clear. In this spring of 1933 Germany was in no condition whatsoever to fight a war; it would have been complete madness, a sheer desire for self-destruction, to fight a war against the armies of France and her allies, which counted millions of men and were excellently equipped with the latest weapons of attack, with the small Reichswehr of one hundred thousand men which had at its disposal no motorized weapons of attack whatsoever, no tanks, no heavy artillery, no military airplanes. Fear of an imminent warlike attack from the part of Germany could, therefore, from the point of view of the Western Powers, under no circumstances be the reason for their position and attitude. The one plausible reason could lie only in the attitude of the Western Powers in regard to the question of disarmament as such, that is, in their unwillingness to carry it out, to continue to discriminate against Germany, to continue to refuse her the realization of her equality of rights, and to continue to keep her down. In this alone, for the leader of German foreign policy, lay the reason for the final proposals of France as well as England in the Disarmament Conference, which were unacceptable to Germany for reasons of justice as well as for reasons of her own security and her national honor. Because even in spite of Germany's equality, which was recognized by the Western Powers in the Five-Power Declaration, the French plan of 14 November 1932 as well as also the English plan of 16 March 1933, the Mac Donald plan, and the resolutions of the Disarmament Conference included therein lacked any practical realization of equality, even from the most objective standpoint.

What justly and objectively thinking person can and wishes to reproach the German State leadership, if it drew the conclusions from all this, and recognized that this behavior of the Western powers contained not only a violation of existing treaties, and also the Treaty of Versailles with regard to disarmament, but also the will of the Western powers to prevent Germany from maintaining her demands, justified by treaty, by force of arms if necessary, and furthermore to keep her as a second-rate State, and also to refuse her the security guaranteed to her also in the Treaty of Versailles. Can you, your Honors, reproach a state leadership which was aware of its responsibility towards its people, if this realization from now on had to be decisive for the continued direction of foreign policy? Because the highest duty of every State leadership which is aware of its responsibility in foreign policy is the securing and maintenance of the existence and the independence of its State, the regaining of respected and free position in the Council of Nations. A statesman who neglects this duty sins against his own people. This realization should carry all the more weight because on the part of Germany nothing had happened which might have been interpreted as a threat against the Western Powers. On the contrary Hitler, in his first program speech in a Reichstag still elected in accordance with Democratic principles, had emphatically declared on 23 March 1933, punctuated by unanimous applause, his will for peace, particularly emphasizing this with regard to France, and confessed himself prepared for peaceful collaboration with the remaining nations of the earth, but emphasized also that as the prerequisite for this he considered the final removal of the discrimination against Germany, the division of the nations into victors and vanquished to be necessary. To these declarations of his, however, not the slightest attention was paid by the Western Powers although they corresponded throughout with the given conditions and contained nothing less than threat. Unfortunately they were unable to effect a change in the attitude of the Western Powers, and to prevent an acceleration of the crisis.

A discernible relaxation only then took place when Hitler, under the influence of the defendant von Neurath, at the climax of the crisis repeated once more to the world with the greatest emphasis his and the German people's will for peace in his great so-called peace address before the Reichstag on 17 May 1933—it is in excerpt form in my Document Book II, No. 52—and expressed his conviction that, as he declared literally, no new European war would be in the position to replace the unsatisfactory conditions of today by something better; the breaking out of such an insanity, as he described the war, would be bound to lead to the collapse of the present social and State order.

This speech of Hitler, whose honesty and sincerity cannot be denied according to the evidence and whose power of conviction also proved irresistible to the Western Powers, effected a general relaxation of the situation, the danger of a new international war was averted, and the world took a deep breath. This, however, also marked the end of the isolation and the loneliness of Germany, which caused her inner change and every kind of revolution, and German foreign policy took the opportunity gladly and with sincere will for active collaboration in the political state gamble, which was offered to her by the suggestion of Mussolini to unite the great Powers, England, France, Italy, and Germany in a so-called Four-Power Pact. This treaty, which was signed on 8 June 1933 in Rome and which was signed in the middle of June 1933 also by Germany, and which in its preamble also referred expressly to the Five-Power Agreement of 11 December 1932, was to place the participating Powers in such a position that if further negotiations in a larger circle, as for example in the Disarmament Conference, should reach a stalemate, they could meet at a smaller conference table. For Germany the main motive lay in the fact that she again became an active member in the totality of European policy in which she was participating as a partner with equal rights in an international agreement, which contrasted the discrimination against Germany in its contents as well as in its character.

As a matter of fact, this part was concluded at a time when a new international tension was already arising and increasing which again threatened to isolate Germany's position. This time it had its source not so much in the Disarmament Conference, the proceedings of which, after the customary fruitless endeavors for progress, were again suspended on 29 June 1933 until 16 October 1933, as in the contrasting position of Germany and Austria in the World Economic Conference which opened in London on 12 June 1933. The Austrian Prime Minister Dollfuss made use of this conference to call the attention of the Powers to a purported threat to Austria's independence by Germany, in that he accused Germany of lending support to the Austrian National Socialists in their fight against his (Dollfuss') Government. Making the Austrian question the center of gravity for European policy and calling on the Powers for protection against alleged threat to Austria's independence by Germany, which the former considered an important stone in the construction of European power relations, he aggravated their mood anew, which had been quieted down only a short time before with some trouble. What the mood was then in the summer of 1933 is shown in my Document Book I, under Nos. 11 and 12, reports of the defendant to Reich President von Hindenburg and Hitler, dated 19 June 1933; but reference is also made to the speech by the defendant on 15 September 1933 (*Doc. Book II, No. 56*) before representatives of the foreign press, which also comments on the consequences of such a mood for the prospects of the proposed negotiations to be resumed by the Disarmament Conference on 16 October 1933 and which is reflected in his words, "Judging by certain indications, the readiness of highly armed States to carry out disarmament obligations for which they pledged themselves seems to be smaller today than ever. Finally, there is only one alternative, realization of the right to equality or else a collapse of the entire idea of disarmament, with incalculable consequences, for which responsibility would not rest on Germany".

This scepticism of the defendant as regards the political situation in general, and prospects of the Disarmament Conference in particular, were only too well founded. For the new so-called Simon Plan—submitted even before the Conference started by Sir John Simon, head of the English Delegation, as a basis for negotiations — and to a no less degree the statement relative thereto made by Sir John, made it clear beyond doubt that the attitude of the Western Powers still continued to be the same as in the spring of 1933 and that they were even still less disposed to justify Germany's demand for an equality of rights. For Sir John declared in plain language that in view of the present non-clarified conditions in Europe, and considering the seriously shaken confidence in peace, a disarmament conference, even after the pattern of the MacDonald Plan which Germany in the spring had declared unacceptable, is an impossibility. This not only meant bringing an unjustified accusation against Germany—which had done no more but stand on the rights accorded it by treaty—but it also was a clear denial of any kind of realization of Germany's equality of rights and of disarmament. As a matter of fact, this Simon Plan falls even farther short than previous plans in doing justice to Germany's rightful demand for equality of right and disarmament, that is, a voting of all states among each other including Germany.

Time being too short, I once more have to refrain here from going into detail and must confine myself to pointing out that it meant an increased restriction and reduction of German armament in favor of the other nations. Because it provided that during the first half of the 8 years' duration of the proposed disarmament, Germany alone, through the conversion of its Reichswehr into an army with a brief period of service, would as a practical matter be still further disarmed, subjecting herself, in addition, to an armament control by the Powers, while the highly-armed powers were not scheduled to begin disarming until the fifth year, and then only in terms of manpower reserve, not in terms of arms. These provisions demonstrated clearer than ever that not only did the Western Powers not intend to disarm, but that they wanted to weaken Germany still more and make her tractable to their power interests. There was no more mention of the fact that the Five-Power Agreement of 11 December 1932 had agreed to recognize Germany's equality of rights.

It really should have been clear to the Western Powers as well that such a plan depriving her of a chance to participate in further negotiations at the Conference was bound to be unacceptable to Germany from the outset. However, on the strength of the lessons which German foreign policy learned in the spring of 1933 when Germany came very near having the Western powers threaten her with war because she was unwilling to renounce her just demands, nothing was left to her this time but to answer the new threat which this plan undoubtedly involved, not only by rejecting the plan but also by withdrawing from the Disarmament Conference as well as the League of Nations. Further negotiations during the conference under such conditions were doomed and could only result in a still greater heightening of contrasts.

It is difficult to understand why the Western Powers failed to foresee Germany's attitude and took her withdrawal from the League of Nations and the Disarmament Conference as a surprise. In Hitler's speech, an appeal for peace delivered on 17 May 1933 and already cited here, he expressed in unequivocal terms that notwithstanding the sincere will for peace and honest willingness towards still further disarmament, provided it were mutual, entertained by the German Government and the German people they would never consent to further humiliation and to renunciation of her claim for equality of rights but that, if such was the demand, they would rather assume the consequences without hesitation. Still more incomprehensible is the fact that in all earnestness the Prosecution places the blame for this withdrawal by Germany on the defendant von Neurath, as head of Foreign Policy, and that it believes it can find evidence of deliberate action by him in preparation for future wars of aggression. This can only be explained by the fact that the Prosecution preserves a complete silence on the reasons and happenings which led up to this withdrawal, and thereby tries to create the impression that Germany's withdrawal occurred entirely without cause. The extent to which the Prosecution's attempt to interpret the withdrawal as an action in preparation for war is contrary to objective history becomes clearly apparent from the fact—which the Prosecution also passed over in silence—that concurrent with its declaration of withdrawal the German Government, through Hitler's speech of 14 October 1933 as well as also through the speech of the defendant von Neurath of 18 October 1933 (*Doc. Book II, Nos. 58a and 59*) not only declared with all possible emphasis its unchanging desire for peace and readiness to negotiate in the case of any disarmament plan which would consider Germany's equality of rights, but also tried to carry into practice this willingness to negotiate by submitting on her part practical proposals for general disarmament, as set forth in the memorandum prepared by my client and submitted to the Powers on 18 December 1933 (*Doc. Book II, No. 61*). The interview granted by the defendant to the representative of the New York Times in Berlin (*Interview Doc. Book II, No. 62*) is an expression of the same wish. A government or foreign minister who intends to prepare, or even plan, an aggressive war is hardly likely to make proposals for limiting, or even still further reducing, the armament of countries, including his own.

Diplomatic negotiations between Germany and the individual Western Powers which followed the memorandum of 18 December 1933 ended, as I may presume to be well known, with the Note of the French Government to the English Government of 17 April 1934 (*Doc. Book III, No. 70*), which closes the door to further negotiations as proposed in an English memorandum of 29 January 1934 as well as another memorandum of the German Government of 13 March 1934, as this was fully stated in the speech of the defendant von Neurath on 27 April 1934 (*Doc. Book III, No. 70*).

The fact which appeared in the preceeding discussion is interesting and must be emphasized here, that in the course of the same an indisputable change was shown in relations between France and Russia, the further development of which became more or less authoritative, not only for the German foreign policy, but also for the entire European policy in the coming years. The Russian representative in his speech to the Office of the Disarmament Conference on 10 April 1934 took the stand, contrary to the point of view always previously represented by Russia, that the task of the Disarmament Conference is to decide on a most wide-reaching reduction of armaments, as through this security will be best provided for, and the non-success of their disarmament efforts, but did not, however, draw the conclusion therefrom that the Conference had failed, but on the contrary defined the creation of new security instruments of international law as the sole task of the Disarmament Conference, a point of view which was underlined further by the Russian Foreign Minister Litvinov on 29 April 1934. With this thesis Russia had made the point of view of France her own—First security, then disarmament; but beyond that the door is opened to the increased disarmament exertions of all the nations. It becomes evident immediately of what far-reaching importance this fact was, if I refer to the French-Russian Assistance Pact which was signed 1 year later which induced the reestablishment of German armed sovereignty occasioned by this and by the increase in armament of all the remaining States. A direct route leads from this declaration of the Russian Foreign Minister via the expletive negotiations in the summer of 1934 regarding the project of the so-called Eastern Pact to the Franco-Russian Assistance Pact of 2 May 1935 and the Russo-Czech-Slovak Assistance Pact of 16 May 1935.

The French Note of 17 April 1934 with its categorical "No", signified the closure of an epoch and the beginning of a new one in international policy. France finally gave to understand that she was no longer willing to carry on with a general agreement between all States aiming at a solution of the questions of disarmament and security, but decided to go her own way from now on. The reason for this lay, obviously, in the fact that she recognized or thought she had recognized that the most important of the participating Powers, England and Italy, were not prepared to follow her unconditionally any more, and to continue to refuse Germany the equality of rights theoretically granted her on 11 December 1932. This was expressed through the far reaching approximation of the English and Italian points of view in the English Memorandum of 29 January 1934 and in the declaration of Mussolini to the English Minister on 26 February 1934, which dealt with the clearly outlined German point of view in the Memorandum of 13 March and 16 April 1934. Similar tendency was shown in the Memorandum of the so-called Neutral Powers, namely Denmark, Spain, Norway, Sweden, and Switzerland of 14 April 1934, but also, above all, the speech of the Belgian Minister President Count Broqueville of 6 March 1934 (*Doc. Book III, No. 66*) showed the same tendency.

With this note of 17 April 1934, to which the defendant von Neurath referred in his speech of 27 April 1934 (*Doc. Book III, No. 74*) before the German Press explained his attitude thoroughly and convincingly, France, as was soon too apparent, finally abandoned the basis and the principles of the Versailles Treaty, the preamble to part V of which has fixed in unmistakeable manner the general disarmament of all States of the League of Nations as the basis and the counter-obligation for the disarmament of Germany. The new French policy set up immediately after the note of 17 April 1934 let it soon be known that it had decided to do exactly the opposite of the basic idea of the Versailles Treaty regarding German disarmament.

The French Foreign Minister Louis Barthou began on 20 April 1934 his journey eastwards, which took him to Warsaw and Prague and first of all, as it soon transpired, tried to prepare the ground for the resumption of diplomatic relations between the States of the so-called Little Entente with Russia, which so far did not exist, and thus prepare the way for the inclusion of the greatest military power of Europe in European politics on the side of France. This succeeded. Czecho-Slovakia and Rumania, the most important States of the Little Entente, recognized the Russian Government on 9 June 1934 and renewed diplomatic relations with it.

In this way France had made the first breach in the ideological and psychological aversion of the European States against the Soviet Russia of that time, and the French Minister for Foreign Affairs could now on his second journey to the East, not only win the consent of all States of the Little Entente to the so-called Eastern Pact which had long ago been negotiated with Russia, but could subsequently place it openly on the agenda of international policy in London in the beginning of July. With this—as the Czechoslovak Minister for Foreign Affairs Benes justly stated in his speech of 2 July 1934 (*Doc. Book III, No. 81*)—a regrouping of the European Powers which appeared capable of overthrowing to a certain extent all former relations on the Continent was announced in advance.

England, which already on 18 May 1934, had stated through the mouth of Stanley Baldwin who at that time was Lord President of the Council, before the House of Commons, that in view of the question a system of so-called collective peace, which of necessity would have to contain the need for sanctions, she stood before one of the most difficult decisions in her history. He coined the phrase "Sanctions are war," gave his agreement in the beginning of July 1934 on the occasion of the visit of Barthou to London, not only to the Eastern Pact but in addition also to the entry of the Soviet-Union into the League of Nations, which had been suggested by France. On 18 December 1934 the League of Nations officially resolved to accept Russia into the League. Thus France had for the most part already reached her goal, the inclusion of Russia, the strongest military power, into European politics, and indeed on her side as would shortly be shown.

In spite of this advised change of European Power conditions, German foreign policy under the direction of the defendant not only continued unaltered and consequently its peaceful struggle for the practical recognition of German equality, even after the French note of 17 April 1934 which it considered disastrous, but also its policy of peace. In his speech of 27 April 1934 already previously quoted, my client has once again and unreservedly expressed the will of Germany, that she was also in future prepared for any sort of an understanding even at the price of further armament limitations by agreement, if this would correspond with her demand for equality. She did not, however, limit herself to this alone. In order to resume the international discussions and negotiations regarding the disarmament question, which had been interrupted by France's "No" of 17 April 1934, Hitler had a meeting in Venice with Mussolini in the middle of June 1934. The purpose and contents of this meeting were at that time summarized by Mussolini with the words, "We have met in order to try to disperse the clouds which are darkening the political horizon of Europe". May I for the sake of prudence recall the fact that Italy at that time was still entirely on the side of the Western powers. Several days later Hitler used the opportunity to emphasize again his and Germany's unshakable wish for peace in his speech at the District Day ("Gautag") in Gera on 17 June 1934 (*Doc. Book III, No. 80*) when he stated literally among other things: "If anyone tells us, if you National Socialists wish equality for Germany, then we must increase our armaments, then we can only say, as far as we are concerned, you can do so, because after all we have no intention of attacking you. We just wish to be so strong that the others will have no wish to attack us. The more the world speaks of the formation of blocks, the clearer it becomes to us that we must concern ourselves with the maintainance of our own power".

It was the same change of the power relationships which was constantly taking more clearly defined shape, and the realization of political tendencies, which were the bases of the English air armament program which was announced before the House of Commons on 19 July 1934, and which the French Minister President Doumergue expressed in his speech on 13 October 1934 at the coffin of the assassinated Minister Louis Barthou with the words, "The weak nations are booty or a danger". No matter how irrefutably correct this idea really was, it received, as far as the attitude of the Western Powers toward Germany was concerned, as little consideration as all attempts of German foreign policy to carry on the negotiations regarding the disarmament question and as the repeated declarations of Germany about her preparedness for understanding. Germany was denied now as before the recognition of her equality. This fact also made it impossible for German foreign policy, apart from the encirclement policy of France which became more discerning every day, to join the Eastern Pact. The reasons for this refutation of the Eastern Pact have been presented in detail in the communique of the German Government of 10 September 1934 (*Doc. Book III, No. 85*). They culminate in the diagnosis that Germany, in view of her indisputable military weakness and defeat, could not take on any treaty obligations towards the highly armed States, which might involve her in all possible conflicts in the East, and could make her a probable war theater. It was not the lack of preparedness to participate in international treaties or even a lack of a will for peace, which caused Germany to maintain this attitude, but first and foremost her notorious military weakness. In addition to this came the true character of France's policy which showed itself more and more, and that of the Eastern Pact as an instrument of the French policy of encirclement directed against Germany. This character became clear to all the world when, in the session of the Army Committee of the French Cabinet on 23 November 1934, the reporter Archimbaud described as an undeniable fact that a formal Entente existed between France and Russia, on the basis of which France would be prepared to furnish a considerable, well-equipped and well-trained army in the event of a conflict. *(Doc. Book III, No. 89.)* This fact, however, was clearly and openly proved through the declaration of the French Minister for Foreign Affairs Laval of 20 January 1935 before a representative of the Russian newspaper Istvestja, in connection with the Franco-Russian Record of 5 December 1934 (*Doc. Book III, No. 91*) and the interpretations of Litvinov of 9 December 1934 given thereto. For those well-informed there could exist no further doubt of the existence of a close French-Russian alliance, even if the ratification of its final text only took place on 2 May 1935 and was then immediately followed by the ratification of the Russo-Czechoslovak Aggression-Pact of 16 May 1935.

It was, of needs, forced upon the mind of every clear-thinking person that such a perfect system of French alliances bore a desperate likeness to the one which had opposed Germany once already, in the year 1914. This involuntary parallel was bound to make every German statesman draw the conclusion that those alliances could only be directed against Germany and constituted accordingly, in every case, a menace to her. And this so much the more as these alliances, this obvious encirclement of Germany, were by no means the only alarming events. Coupled with it, a vast increase in military armaments of nearly all non-German countries had been carried out in the course of the last months. Not only had England begun to carry out her large-scale armament program, as shown by the British White Book of 1 March 1935, the submitting of which does not seem necessary, it being an official document, but in France too the efforts to reinforce her army had begun, under the guidance of her, at that time, most popular general, Marshal Petain, while in Russia an increase in the peacetime figure of her army from 600,000 to 940,000 men had taken place, under joyful acquiescence on the side of France. Czecho-Slovakia had introduced, in December 1934, a two years compulsory service (*Doc. Book III, No. 92*) and Italy also was continually increasing her armaments.

After the bitter experiments of the latter years, all this was bound to be felt from the point of view of German politics—as I have shown you, my Lords—as nothing but a vast menace, and interpreted accordingly, a menace which left Germany all but defenseless. A foreign policy, conscious of its responsibility, had to reckon at each moment with the danger that such a concentrated and continually increasing power of France and her allies could fall upon Germany and crush her. For nothing is more dangerous than a concentration of power in one hand; it is bound, according to old experience, to lead some day to an explosion, if not counter-balanced by some other power; and this explosion is then directed towards the country nearest-at-hand considered as an enemy. This latter was and could be only Germany, as only this country was considered by France as a foe, no other country in the world besides her. And now I beg leave to ask you, my Lords, whether it was not an obvious command of self-defense, an obvious demand of the most primitive instinct for self-preservation of any living being—and the nations too are living entities, they too possess such an instinct for self-preservation—that now the German government and the German people took back the military sovereignty which had constantly been denied it, and tried to take measures of a security against the menace pending upon Germany by organizing a military aviation and by establishing a peacetime army of only 36 divisions on the basis of compulsory military service. I refer to the proclamation of the German Reich government concerning the restoration of German compulsory service of 16 March 1935 (*Doc. Book II No. 97*).

However, Germany had waited herewith, in view of the negotiations concerning a general agreement on disarmament which had started again with the so-called London communique of 3 February 1935 of the British Government and in which the German foreign policy, faithful to its readiness for peace which it had constantly proved, had at once consented to participate, and it was ready to wait even longer, until one could see whether or not these new negotiations promised to succeed, when suddenly, before even the negotiations had actually begun, the French government submitted, on 1 March 1935, a new defense bill concerning prolongation of military service, and the British government published at about the same time its afore-mentioned White Book. In view of both these documents, the German government could not do otherwise but take the measures mentioned before if it did not want to become a traitor to its own people.

The effect of these German measures on the Western powers was a different one. England and Italy, it is true, at once protested against them as an alleged unilateral cancellation of international treaties, but they did by no means cut the threads for further negotiations. The British protest note contained the explicit inquiry whether the German government was ready to carry on further negotiations of the kind and extent provided for in the London communique, an inquiry which the defendant von Neurath at once answered in the affirmative by the German communique of 18 March 1935 (*Doc. Book III, No. 98*). And the then British foreign Secretary Eden went to Berlin at the end of March 1935 in order to hold conversations about the possibility of an agreement on the naval question. In this connection, I particularly want to refer to the deposition of the witness, Ambassador Dr. Diekhoff, who has been examined here. France only consequently pursuing its attitude toward the League of Nations and the latter's exclusive legitimation for collective solution of the problems of disarmament and, therefore, of peace took the initiative to submit to the League of Nations, on 20 March 1935, the measures taken by Germany, and to induce the League to establish a violation of the duty incumbing to all nations of carrying out assumed obligations. It goes without saying that the German government refused to accept, in a note of 20 April 1935, the renewed discrimination contained in this resolution of the League of Nations.

However, the German foreign policy did not let itself be kept back by this resolution to continue trying very actively to establish an agreement with the Western powers, nor did the signature, on 2 May 1935, of the aforementioned Franco-Russian Assistance Pact and of the Russian-Czechoslovak Assistance Pact supplementing the former. On 21 May 1935 Hitler proclaimed in the German Reichstag a new peace program in which he declared once more, and to the largest possible extent, his readiness—most strongly stressing his and the German people's will for peace—to participate in any system of collective cooperation to secure European peace, and to re-enter the League of Nations, as well as to comply with any of such restrictions of the German Wehrmacht's armaments, which other countries also would adopt, provided the equality of rights for Germany was recognized. This speech of Hitler and the diplomatic discussions with other powers initiated at the same time had the promising result that between

England and Germany the well-known naval convention of 18 June 1935 was agreed on which established a fixed ratio of the respective naval forces.

This German-English agreement is of the greatest importance in a double sense. On the one hand from a political point of view, it signifies no less and no more than the implicit acknowledgment of German military sovereignty by England, a negation of the League of Nation's resolution and, at the same time, of the French point of view, and the acknowledgment and approval by England of the German act which had been stigmatized by the League of Nations as a violation of treaties. For the first time, therefore, the equality of rights for Germany had been recognized not only de jure, but also de facto by one of the Western powers, and by one of the most important too. On the other hand, it proves, from the point of view of this trial, irrefutably that the prosecution's contention, that one had to see in Germany's rearmament an act of preparation of the future wars of aggression of Hitler, is erroneous. On the contrary, this naval agreement shows clearly and unambiguously that the German foreign policy at that time, when still under guidance of my client, did not have any warlike intentions, much less plans, that the re-assumption of military sovereignty under no circumstances had any warlike purposes, but nothing but a decidedly defensive character.

I may ask which statesman who carries in his heart warlike intentions or plans would voluntarily consent to a restriction of his armament and, therefore, of a successful execution of his designs and plans, and, moreover, to an extent as provided by the naval agreement? Even the most malevolent mind cannot earnestly contend that the naval power allowed to Germany by this agreement would have been in the least sufficient for a war of aggression; that has been unobjectionably established by the evidence of this trial. Hitler himself had by this agreement robbed himself of the possibility of creating a navy which would have been able to wage a war of aggression. It is clear that any transgression worth mentioning of the agreed ratio of the two navies, which, as things were, could under no circumstances and by no means have been kept secret, would beyond doubt either have induced England to increase her own navy accordingly, or would have caused her to obstruct this German intention, and this could have been done any time. From whatever point of view one may look at this naval agreement, the fact that it was and is an irrefragable proof of the absolute honesty and sincerity of the repeated declarations of Germany's will for peace, an unreversible proof against the presence of any, even the most secret warlike designs or plans of German foreign policy and, therefore, of its leader, the defendant v. Neurath is not to be shaken.

In France this Naval Agreement met with general opposition. It was regarded as an arbitrary act of England, a departing from the common line that was still kept to in the resolution of the League of Nations, and that was bound to interfere with the French plans. So France was very reluctant and reserved with regard to the negotiations started by Britain for the conclusion of general air-pact negotiations, which ran parallel with the negotiations about the Naval Agreement. Hitler's speech of 21 May 1935 had also been causative for these negotiations. Because in this speech, Hitler, referring to the London report, held out his hand for an agreement on limiting of air armaments. And the German government themselves, taking up the English suggestion, presented a project for such an air pact on 29 May 1935. Negotiations lasting for nearly 3 months between the English and French governments were necessary before England succeeded to induce France to agree to participate even in these negotiations. This consent, however, was in reality no consent at all because, among other things, it was tied to the condition that the realization of this air pact must keep pace with the negotiations about the East pact. As this pact, however, had then to be rejected by Germany for reasons of its own security, as already mentioned, it was clear that the French condition in reality blocked the way to successful negotiations from the start. When at the beginning of the Soviet Union sponsored Komintern congress on 25 July 1935 it became unequivocally clear that the Komintern's aim was the world revolution, Germany's opposition—as will be understood—stiffened.

It could not surprise that the defendant von Neurath on 16 September 1935 communicated to the English Ambassador that the German foreign policy did not consider opportune an answer to the memorandum of the British Government of 5 August 1935, which demanded answers to a number of questions of France, that were hardly connected with the air pact. Besides the Italy-Abyssinia conflict had already thrown its shadow ahead, whereby alone the further negotiations about the air pact were suspended. How could a political agreement between the five powers of the Pact of Locarno be possible, and German foreign policy very reasonably pointed to the fact, if the collaboration of these powers was in dissolution and individual powers of this pact were facing each other in military readiness. On 7 September 1935, as it is known, the English home fleet set out for the Mediterranean, and negotiations between England and France about the application of sanctions against Italy were in full swing. On 3 October 1935 war broke out between Italy and Abyssinia.

The German foreign policy succeeded in keeping out of the now following events in Africa and the efforts of the powers to apply sanctions against Italy. But nevertheless the events that followed became important for the German foreign policy; because it was these events and specially the question of sanctions which prepared a new constellation of powers, which on one hand led to a closer union of England and France and the point of view taken up by her and which, on the other hand, brought Germany, who was again defamed by the resolution of the League of Nations of 17 April 1935, naturally closer together with Italy who was defamed by the sanctions being taken against her.

The consequence of these sanctions was at the same time logically the dissolution of the Pact of Locarno, because it was not possible to consider a pact as being still legally in existence if its participants were opposed to one another in so hostile a way, that the danger of war-like actions was present at any moment.

The efforts of the French Government, already begun with its note of 10 September 1935, to draw also England into the net of its pacts and their obligations, clearly showed the tendency of French policy, and inevitably confirmed German statesmen in their conviction that France consistently followed only its policy of encirclement which was felt as a menace to Germany. However, Germany's leaders and the defendant von Neurath still hesitated to draw the last conclusions from this and from taking the absolutely necessary step for Germany's most primitive security. German foreign policy still kept hoping, in its unshakable desire for peace and readiness to negotiate, that an agreement could be reached, that France would abandon its course, and that a really honest and sincere understanding with France could be reached. This hope, however, was soon found to be a delusion. On 16 January 1936 French Foreign Minister Laval announced that after his return from Geneva in the beginning of February he would present for ratification to the French parliament the pact of assistance concluded with Russia. And at about the same time the defendant von Neurath heard from reliable sources that the French General Staff had worked out military plans for an attack on Germany, providing for the advance of French troops from the Rhineland and following along the line of the River Main so as to join hands via Czechoslovakia with the Russian armies. Hereby the offensive character of the Franco-Russian pact was proved even to the most naive. There was all the less ground for doubt, if one took into consideration the negotiations that took place inside and outside the French chamber before the pact's ratification. For even in France resistance to this pact, specifically on account of its offensive character, was not small. The French veterans of the 1st world war headed the opposition. The Union Nationale des Combattants declared, in a resolution of 8 February 1936, that this pact contained more certainties of war than possibilities of peace. And the speech of deputy Montigny, in the French chamber on 13 February 1936, was a single flaming protest. It is contained in my Document book IV 107. The pact opened even further, so Montigny said, the breach between France and Germany, and Germany must more than ever gain the impression of encirclement, if a party depending on Moscow like the communists party followed the policy of Delcasse, the policy of revenge and of the former Russo-French pact. The greatest danger of war would arise, if France were to convey the impression that she enjoyed the secret protection of Moscow. Even the German government made a last attempt to keep France from ratifying the pact. In the interview that Hitler gave to Bertrand de Jouvenel, the correspondent of the French Newspaper "Paris Midi", on 21 February 1936 *(Doc. Book IV 108)* Hitler once again held out his hand to the French people for an understanding, for lasting peace and friendship. "I want to prove to my people", so Hitler literally declared "that the idea of hereditary enmity between France and Germany is nonsense" and Hitler once and for all in that interview, finished off the reference to his book "Mein Kampff", that was brought up then as it has been continuously been repeated in this court, by stating: "When I wrote this book I was in prison. At that time French troops occupied the Ruhr, it was a moment of greatest tension. Yes, we were enemies, and I stuck to my country as it should be, just as I stood to my country against yours in the trenches when I was for 4½ years in the war. I would despise myself, if in case of a conflict I were not a German first of all. But today there is no reason anymore for any conflict. You would like me to correct my book like a writer. But I am no writer. I am a politician. I make my corrections through my foreign policy which is directed towards an understanding with France. If I achieve the German-French understanding, it will be a dignified correction. At the same interview, however, Hitler drew attention most clearly to the inevitable consequences of the Franco-Russian pact: "My personal efforts to such an understanding will never cease. However, this more than regrettable pact would, in fact, create a new situation. Are you not conscious, in France, of what you are doing? They let themselves be drawn into a diplomatic game of a power which wants nothing but to bring the great European nations into a chaos from which this power alone derives advantage. One must not lose sight of the fact that Soviet Russia is a political factor which has at her disposal an explosive revolutionary conception and a gigantic armament industry." He concluded this interview emphasizing again that France could end this alleged German danger for good if it so desired, because the German population had complete confidence in him, their leader, and he, this leader, desired friendship with France. The hearing of evidence has proved that Hitler meant these declarations to be honest and sincere.

But it was all in vain. The French Government could not be moved any more to relinquish its rigid attitude and on 27 February 1936 the French Chamber voted to ratify the pact in spite of all warning.

The die was cast; on 7 March 1936 German troops marched again into their previous garrisons in Rhineland Zone, which had been demilitarized until then, the German Reich had won again its full sovereignty over the entire Reich territory, the last of the restrictive barriers of the Versailles treaty had fallen. This reinstatement of the full sovereignty of the Reich over the Rhineland, however, was of importance for one reason, which by far surpassed its political and prestige significance as seen from the standpoint of existence of the German State and nation, and also was the sole and therefore the more pressing reason and cause for the important resolutions made by the German Government. This was the security of the Reich. As long as the Rhineland was demilitarized not only one of the most valuable and most important provinces but the Reich itself, and especially its life source the Ruhr territory, was without protection against any military attack from the West. The only protection for Germany against the latent terrible danger lying in this fact existed in the Locarno pact, made in 1925 firmly guaranteed by Great Britain and Italy in which France and Belgium on the one hand and Germany on the other hand underwent the obligation not to wage war against each other. Therefore it was—if the German Reich was to put up in future with the vulnerability of its Western frontier by having the Rhineland demilitarized — a matter of life and death that the protection given by this treaty would not be falsified. Such falsification of its meaning and its essence, the protection of Germany, however, occurred at the moment when the political conditions and constellations which existed at the time of the conclusion of the treaty had changed fundamentally. When the Locarno pact had been concluded the political conditions in Europe and therefore also in Germany were governed and determined solely by the four powers, England, France, Italy, and Germany acting in unison, and therefore, the men who made the Locarno treaty for Germany could legitimately rely on the faithfulness of France and Belgium as sufficient protection. This supposition however ceased to exist and the meaning and essence of this treaty and with it the protection for Germany was bound to be changed, i.e., to be falsified, when France definitely changed the political conditions of Europe through concluding her pact of assistance with Russia created a situation which frustrated the aim and purpose of the Locarno treaty, namely, to give Germany protection against the permanent danger caused by the demilitarization of the Rhineland. The political constellation of Europe had been completely changed by this pact, by the fact that the world's greatest military power, which was openly revolutionary minded at that, had entered the political arena. In the face of the not clarified situation in the East, amply laden with conflicting material, the pact could lead easily to the possibility that France, because of her duties toward Russia, became drawn in a war and would attack Germany, should the latter get entangled in a conflict in the East. One has to admit that it was in no way sure, in any case highly problematic, whether the guaranteeing powers, England and Italy, would consider the case for which the guarantee was given as arisen and would actively assist Germany against a French attack, or would rather prefer to stay neutral. That this possibility positively existed also from the legal point of view was shown already in the German note of 25 May 1935 about the French-Russian pact (*Doc. book III 105*) and was emphasized again in the German memorandum to the signatory powers of the Locarno pact of 7 March 1936 (*Doc. book IV 109*). As I have already described to you, this possibility, this danger became even greater and more imminent through the events up to the ratification of the French-Russian pact by the French Chamber and by the ratification itself. Therefore, it was a command, a self-evident act of self-defence and self-preservation when the German Government, realizing this threatening danger, took steps which were the minimum of what was necessary to meet this danger, namely, to establish the military sovereignty of the Reich in 1935 and to re-occupy one year later the demilitarized zone of the French Armies, and thereby to move forward the defense line against any attack from the West to the border of the Reich. With all due respect to the rights and rightful interests of other nations, the highest all overriding duty of every government, every responsible statesman, has been, is now, and always will be, to maintain and safe-guard existence and life of his own State and nation. A statesman who neglects this duty commits a sin against his nation. Re-establishment of military sovereignty, rearmament, and reoccupation of the Rhineland were the natural reactions, the answer of the German statesmen is duty bound and therefore also that of the defendant von Neurath to the policy of the French government, in which after all that had happened before, they had to see and saw a threat to Germany.

Far be it from me, and I wish to state this here emphatically, to reproach the French government morally or otherwise for the policy followed by it as I have described it above. Moreover, I am of the conviction—in agreement with the defendant von Neurath—and recognize fully, that the French policy was dictated solely by France's interest and the French statesmen surely have done only what they believed was just from the French point of view. And if they proceeded thereby from an incorrect premise according to German conviction, namely, the premise that a Germany which had regained its strength presented a danger and a threat to France, that from times of old the German people had faced in a blind rage of hatred and enmity the French people and were animated only by the furor to attack and the craving for revenge, then my client and I can only sincerely deplore this, but we can not condemn it. But on the other hand I too must claim the same right for the German statesmen, for the defendant von Neurath, that their deeds and actions be judged according to their motives, according to the then prevailing circumstances which of necessity from the viewpoint of German interests led to these motives, and that not an, in itself most, improbable interpretation which was the farthest from them be given to their motives. Politics, diplomacy are history which has come to life. Like the entire universe, like everything that lives and moves in it, so too is this living history subject to an unchangeable law, the law of causality. And I believe in my deliberations to have given irrebuttable evidence to you, Your Honors, of the following facts: that the two actions charged to the defendant by the prosecution and which are said to incriminate him in particular because they represent breaches of contract in preparation of war, namely, the recovery of the military sovereignty of the Reich and the remilitarization of the Rhineland were, according to the iron rules of logic and necessity, the outcome of the events and the political developments during the years of my client's activity as Foreign Minister due to the politics of the Western Powers, that neither he nor Hitler have consciously, intentionally, and according to a preconceived plan brought them about, but that they were the inevitable consequence of the French policy. They can therefore not only, as is asserted by the prosecution in its retrospective consideration of things, not have an aggressive or even war-preparing character or tendency, but to the contrary by serving only the purposes of defense against and the warding off of a possible attack, they have an outspoken defensive and hence peaceful character. That alongside of this there is no room for their interpretation for a future war of aggression by Germany, I guess I need not emphasize. The assertion of the prosecution proves only the absolute unsuitableness, the whole absurdity of a retrospective interpretation of, and conclusions drawn from certain historical events torn out and abruptly lined up without any coherence. With the investigation of historical truths, which should be the first pre-supposition and duty of this high Tribunal not only for the forming of its judgment, but also for its duty to direct the ways of a new international law controlled by ethical principles, this manner of thinking has nothing whatsoever in common.

But a critical examination of the two steps charged against the defendants as breaches of international treaties does not prove sound upon closer scrutiny of the connections. For the Treaty of Versailles as well as the Treaty of Locarno had in the course of time and events not only lost their signification and therewith their inner justification, but both of them had long since been breached by exactly the French policy and thereby de jure annulled, the Treaty of Versailles by France's obstinate refusal of the disarmament obligations imposed upon her as well as upon the other contracting nations in return for Germany's disarmament, the Treaty of Locarno by the agreement with Russia which was incompatible with the Locarno pact. History, as often before, had passed over them too, and had thus shown the nonsense of applying rigidly the dogma of "Pacta servanda sunt" as France tried to maintain against Germany. This fact will not be altered, not even by the League of Nations resolution of 19 March 1936 which had been proposed by France and which is not astonishing in view of France's dominating position in the League of Nations, in which the latter declares that Germany, through re-militarizing the Rhineland, had violated article 45 of the Treaty of Versailles. History passed over these too.

I believe no further comments are needed upon this resolution and the explanation and parleys between the participating nations which preceded and followed it, for gradually in the course of events they petered out. Europe finally put up with the accomplished facts. * * * And even on the supposition of the correctness of this resolution: According to the Charter of this high Tribunal the breach of an international contract is punishable only when it serves the purpose of preparation for a war of aggression. And in the course of this trial one of the American gentlemen of the prosecution stated expressly that it was absolutely legal and justifiable by peaceable means to bring about a revision or the end of treaties. But the German policy has been nothing else. The military action of the re-occupation of the Rhineland was in view of the small force of troops of only one division without participation of the air force in reality only a symbolic act for the restoration of the sovereignty of the Reich, and has been proved already by the fact that as early as 12 March 1936 the German government through its ambassador in London in a statement contained in my Document book IV, No. 113, made the proposal in the case of reciprocity to abandon the re-enforcement of troops and their closer approach to the borders. The proposal was rejected by France. The German policy has throughout and in every respect held to its line of peace policy for which it had stood consistently for many years, and in reality it only wanted to serve and has served the purpose of peace and its maintenance in Europe. Both steps, the restoration of military sovereignty as well as the re-occupation of the Rhineland, were, as I want to especially emphasize here, nothing else than the visible expression and effluence of the full and unlimited sovereignty of the Reich. This sovereignty in its part has already been recognized by the Western powers in the often mentioned Five-Power Agreement of 11 December 1932 by the recognition of German right of equality. More conclusive evidence of the love of peace and the absolute peace policy of the defendant von Neurath could hardly be found than the fact that for years he waited with the realization of this recognition, in the interests of avoiding complications which due to the French policy by reasons of its former attitude might possibly arise, up to the moment when in consequence of the changed balance of power, this realization became an undeniable necessity for the security of the Reich, a necessity for self-defense. And the German foreign policy continued in practice to follow this tendency unchanged, even after and in spite of this resolution. In the German memorandum of 31 March 1936 (*Doc. Book IV, No. 116*) German foreign policy once more submitted to the powers, on behalf of the Reich Government, a new great peace plan for a quarter of a century of peace in Europe, by which, as is stated in conclusion, it wanted to make a contribution to the building up of a new Europe on the basis of mutual respect. It thereby again gave clear and unmistakable evidence of its immutable will for peace. That this German peace plan, the absolute honesty and sincerity of which had been affirmed upon oath by the defendant, was also not successful, and did not lead to the building up of a new pacified Europe, was not Germany's fault.

These same peaceful tendencies and intentions continued to dominate the defendant's policy during the years 1936–37, in spite of all the disappointments he had experienced to date. This was expressed above all also by the treaty between the German Reich and Austria, which was concluded on the 11 July 1936 as the result of negotiations which had been carried on for some time by the defendant von Papen. Not only the defendant's own testimony but also the testimony of the witnesses Koepcke and Diekhoff proved beyond doubt that the standpoint on the Austrian question which the defendant consistently took up and supported from the very beginning was that a closer cooperation between the two countries—both in the political and particularly, in the economic field—had indeed to be striven for, but that Austria's independence had under all circumstances to be respected and remain intact.

Therefore the defendant was a strict opponent of any attempts of interference by Germany with the internal politics of Austria and the attempts of the party to support the Austrian National Socialists in their fight against the Austrian governments of Dollfuss and Schuschnigg and he had protested again and again against them with Hitler and not without success. That he, this Christian minded, honorable man, abhorred and condemned from the bottom of his heart the murder of Dollfuss need not be emphasized. And just from that viewpoint he welcomed the agreement of 11 July 1936, as it corresponded throughout to his own opinion. This alone contradicts the assertion of the prosecution that the agreement was concluded with intent to defraud, that is with the intention to lull the Austrian government into security and hereby to prepare and facilitate for the future the intent already existing at that time of incorporating Austria by force into the German Reich. The definite sincerity and honesty of the defendant at the conclusion of the agreement is confirmed by the sworn testimony of the then Austrian foreign minister, Dr. Guido Schmidt. That the defendant Neurath had no reason to doubt Hitler's honesty and sincerity is demonstrated unequivocally by Hitler's statements as deposed by the witness Koepcke to the British Foreign Minister Simon on his visit in Berlin in March 1935 in connection with the fact that Hitler immediately after conclusion of the agreement urged on the leaders of the

Austrian National Socialists, Rainer and Globocnik, strict adherence to the agreement by the Austrian Nazis as shown by the testimony of the defendant. And thus, from his viewpoint, he considered this agreement another step to the appeasement of Europe as the recognition of Austria's independence proclaimed in it eliminated the European danger point comprised in the Austrian problem.

In the same way the defendant worked on an improvement of the relations between Germany and the Czechoslovakian Republic since it was only with this aim in mind that he mentioned so often to the Czechoslovak Ambassador, Dr. Mastny, that the Czechoslovak government must at last meet the demands still very moderate at that time of the Sudetan Germans, which were based on a promise in that matter given already in Versailles by the Czechoslovak government but not kept by her.

Nothing was further from the defendant's mind in both questions than the idea of their solution by force as later, after he had left his position as Foreign Minister, Hitler thought it the right thing to do.

And his efforts to improve the relations between the Reich and the European Southeastern nations and to make them closer were served just as little aggressive intentions or even plans to partition Czechoslovakia with the help of these nations. If in Messersmith's affidavit it is alleged that Germany in order to secure this aim had promised to the Southeastern states, and even to Poland, parts of Czechoslovakia and even of Austria, one can call these definite fantastic ideas which do not contain an iota of truth. What can be thought of these assertions is shown by the fact that the prosecution could not submit a single report from one of the diplomats of the Western powers accredited States which would confirm their accuracy or even only indicate it. Should only Mr. Messersmith have been so clever to have learned of such plans? In reality the defendant's efforts and his trip to Budapest, Belgrade, and Sofia served exclusively peaceful purposes, namely the exchange and the strengthening of the economic relations of Germany with these states, an endeavor which, as shown by the testimony of the witness Koepcke, was close to the defendant's heart and influenced his policies.

How far from him was any policy which even in the remotest sense seemed to him in accord with his policy of peace and international understanding is proved best by the fact that he rejected the negotiations with Japan, entered into and carried on by the defendant von Ribbentrop in London without his assistance and completely independent of him, on direct instructions by Hitler, and objected to the Anticomintern Pact finally concluded with her and expressed this clearly by refusing to sign this pact. It was, as is well known and something quite extraordinary, signed by Herr von Ribbentrop as Ambassador. The objection of the defendant to this kind of policy could hardly be expressed more strongly.

The defendant v. Neurath adhered faithfully and constantly to the last moment to this, his consistent peace policy in spite of the influences of other circles, especially from the Party, noticeable during his last years in office. He hoped until the last moment to be able to check successfully these influences, to eliminate them, and to further direct the policies of Germany along peaceful lines, faithful to his own convictions and to his promise to Hindenburg. When, on 5 November 1937, through Hitler's speech and his subsequent conversation with Hitler about it in January 1938, he came to the conclusion that his influence on Hitler had disappeared, that Hitler would not shrink back from forceful, warlike measures, he drew immediately the consequences and submitted his resignation which was accepted.

His task, entrusted to him by Hindenburg, had become impossible to fulfill. He would not and could not have anything to do with a policy which did not shink from warlike measures. It was completely out of the question to cover such a policy with his name, it would have been the negation of his entire life work, he would have betrayed himself and his people.

But this did not exclude that the defendant, who placed the welfare of his people above everything even above personal interests and desires, made himself available again when need be or when he believed to be able to spare Germany warlike complications, the danger which was brought about by Hitler's policy made along different lines. And out of this, his attitude, it is only too understandable that when Hitler summoned him on 11 March 1938 to inform him of the march of the German troops into Austria and because of Reichsminister v. Ribbentrop's absence in London to ask for his advice and for the answering of the protest letter of the British Embassy, he declared himself willing to do it. But if the prosecution now accuses him that the content of this reply was actually incorrect the following must be, said against it: The defendant had in this letter only stated what Hitler himself had told him about the events. The defendant himself knew just as little about the actual events as the rest of the world, as, since his resignation as Foreign minister, he no longer received any political information whatsoever. Hitler's announcement about the marching in of the German troops surprised him just as much as it did everybody else and as the order for it had surprised even the highest commanders of the German armed forces, as admitted by Henderson himself in his well known book, with the addition that Hitler's decision to march in could only have been made a few days before. There was all the less reason to doubt the accuracy of the description of the preceding events given to him by Hitler, as it was given in the presence of Goering and not contradicted by the latter. With his true and pure character and in view of his entire previous official activity under clean and honest governments, it did not even occur to him that the head of the state, Hitler, could lie to him and give him, at such an important moment, information for answering the British protest, the incorrectness of which was inevitably bound to be demonstrated within a very short space of time. And whom could he really have asked? Only very few men besides Goering had real knowledge, and those he could not ask, if only because they were not in Berlin. Goering did not contradict Hitler's description. He also did not—and this I would like to draw particular attention to—sign in his own name, nor on behalf of the absent Foreign minister, the reply which he caused to be drafted on the strength of this description of Hitler's, for which he also did not use the letterheads of the Ministry of Foreign Affairs, but as the wording of the document discloses, forwarded the description of the events by order of the Reich Government. The Reich Government, however, was Hitler, or rather on this day, Goering. Thus he unmistakably expressed that he did not write on behalf of himself, taking the responsibility himself, but that rather, like an attorney, he only forwarded the reports of a third person, in this case of Hitler. He cannot be reproached for not having doubted their actual accuracy and for not having re-examined the official description given by the Head of the State —who was Head of the State after all—aside from the fact, that he would not have been in position to examine them.

Just as little can he be reproached for the statement made a short time later to the Czechoslovakian Ambassador, Dr. Mastny. Aside from the fact that according to the statement by the defendant given under oath the discussion in question came off in a different fashion as was portrayed by the report of Ambassador Dr. Mastny, aiming ostensibly at greater emphasis and effect, the penultimate paragraph of this report (*Doc. Book V No. 141*) singularly discloses that even Mastny interpreted the statement of the defendant—that Hitler had no intention to attack Czechoslovakia and saw himself bound by the provisions of the agreement of arbitration now as before—to imply no permanent guarantee for all future, but only for the immediate moment, that is, until the action against Austria had been terminated. In view of the insufficiently prepared state of the Wehrmacht for war, as confirmed by the defendant Jodl, there was absolutely no reason to doubt the accuracy of this statement, that is, to doubt that it actually corresponded with Hitler's wish at that time, in spite of the fact that the prosecution pointed out Hitler's statements in his speech on 5 November 1937 with regard to the conquest of Austria and Czechoslovakia. For these statements applied only to the possibility of war with other states and to a much later period. Thus the accusations raised against the defendant by the prosecution in this point are also unfounded. That Hitler, already a few months after his speech on 5 November 1937, decided to incorporate Austria into Germany, came as a surprise to all, even his closest collaborators. Aside from the development of trends in Austria this, however, was brought about not at least by conferences held between Hitler, the defendant, and Lord Halifax, the then Lord Privy Council, in November and December 1937, in which, according to the deposition upon oath of the defendant, Lord Halifax declared that the British people would not understand why they should enter into a war because two German countries united.

Once more, in the fall of 1938, the defendant v. Neurath took the opportunity to intervene on behalf of the German people, in order to stave off the immediate danger of war. I need not go into details after the coinciding testimony of Goering and other witnesses of how the Munich conference was made possible toward the end of September 1938. It is a fact, that its bringing about and its success, i.e., reaching an agreement with Britain and France in the Sudeten question was due not to a small measure to the initiative and cooperation of the defendant. That, however, he was able to accomplish this is due to but one circumstance which, in complete misunderstanding of the situation, is also made a point of accusation by the prosecution, that is, the fact that upon his resignation as Foreign Minister he was appointed President of the Cabinet Council, which had been newly created by Hitler at the same time.

Without being in this position it would not have been possible for him to get to Hitler in September 1938 and to persuade him to agree to the Munich conference. For, contrary to the allegation of the prosecution, even though maintaining the title of Reich Minister he was no longer an active Minister, i.e., a member of the Reich Cabinet as from the day of his resignation, which is discernible from the fact, that his salary was decreased by one third.

Consequently any co-responsibility of the defendant for the policy of the Reich ceased as from that day. For, contrary to the statement of the prosecution, as President of the Secret Cabinet Council he was not a member of the Reich Cabinet and he had no access, leave alone a seat or a vote in the Cabinet sessions. This has been established beyond doubt already by the wording of the decree of Hitler's, creating this secret Cabinet council, for it says there expressly that its mission lies in rendering advice to Hitler personally, that is, solely to Hitler and only in affairs of foreign policy. Even the book of Huber "Constitutional law of Greater-Germany", quoted by the prosecution under 1744–PS, in its attempt to prove the contrary, shows that the Secret Cabinet Council and its President had nothing whatsoever to do with the Reich Cabinet and were not a branch or an organ of it, but nothing but one of the several of the Fuehrer's personal offices. As it has been proved by the testimony of Goering, Lammers, and other witnesses, the Secret Cabinet Council never started work and was not meant to do so from the beginning. In point of fact its creation was to bestow a personal honor upon him and was meant to efface the impression that differences had arisen between Hitler and the defendant. That he himself did not look upon his appointment in any other way is proved by the fact that the defendant lived on his estate in Wuerttemberg from 4 February 1938 on as a private citizen according to his own personal inclinations and only very rarely came to Berlin, where, however, he was not and could not be active in any official capacity since he was deliberately kept from all information on political affairs by the Foreign Office.

If the prosecution believes that it can conclude from the documents submitted by it under 3945–PS that the defendant received sums of money from the Reich or the Reich Chancellery for the gathering of diplomatic information, this is refuted, apart from the defendant's own testimony on oath, by a letter among these documents dated 31 May 1943 from Amtsrat Koeppen, the Head of the office of the secret Cabinet council, which was conducted for appearances sake—a letter which proves conclusively that these payments of not very large amounts, made at great intervals to this office, were to cover the cost of maintaining this office and were not intended for any secret purposes or information.

Little as the defendant made use of his position as President of this secret Cabinet council, with one exception in September 1938, just as little was he active as a member of the Reich

Defense Council, to which he was appointed by the Laws for the Defense of the Reich.

Here too the Prosecution is making a mistake in turning this membership into an accusation against him and in using it to foist upon him war-like intentions or the support of such intentions. In view of the manifold discussions about this Reich Defense Council during the course of the hearing of evidence, I believe I can dispense with a more detailed examination of this attempt by the Prosecution and limit myself to pointing out that no aggressive tendencies of any kind were contained in these Reich Defense laws, but that, on the contrary, as their contents state, they merely contain—as is the custom in any state that has to reckon with the possibility of a war—the necessary provisions for the event of the Reich being attacked or being drawn into a war in some other manner. How one can deduce there from warlike intentions or plans on the part of the defendant is, however, utterly incomprehensible. The defendant furthermore never participated in a single one of the sessions of this council and no reports about the decisions of this council were ever forwarded to him. The document 2194–PS submitted by the prosecution as alleged counter-evidence was not sent to the defendant at all but to a department of the Reich Ministry of Transport (Reichsverkehrsministerium) attached to the Government of the Protectorate, namely, the transport department, and was intended for the latter. And its sender was not the Reich Defense Council (Verteidigungsrat) but the Ministry for Economy and Labor of Saxony.

With all these and similar efforts the prosecution will never be able to prove that the defendant, by his policies, was at any time directly or indirectly guilty of the crime of planning or preparing an aggressive war or even of approving or assisting such. The opposite is the case.

All his efforts were bent to one and only one end, to attain the aims by peaceful means and in a peaceful way only which already had been aspired to by all former democratic governments since 1919, namely, the removal of the stipulations of the Treaty of Versailles, which were discriminating for Germany, stamped the German Reich to a second class State, and to bring about a general pacification of Europe. Not one of his diplomatic actions served any other purpose or contained any other intention which would involve a crime in the sense of the Charter.

With full justification therefore, his resignation as Reich Foreign Minister was received by the whole world with anxiety and dismay, inside as well as outside Germany, especially in conservative circles—I refer to the statement of the witness Diekhoff—by which for itself the assertion of the prosecution is refuted, that he was active in these circles as a fifth columnist. What the Prosecution points out to all this with regard to Hitler's speech to his generals in November 1939 and still less with regard to the speeches by the defendant himself of 29 August and 31 October 1937 will alter none of those facts at all. Hitler's speech was held at a time of the first military successes and was calculated as laying claim to the success of his, Hitler's state-leadership, and should only be valued for this face-value. The speeches, made by the defendant however, say just the opposite of what the prosecution likes to interpret into them. For both speeches, contained in my Document book IV, Nos. 126 and 128, emphasize quite expressly the successful pacific intentions of the German Foreign policy, conducted by the defendant, and emphasize especially that the gained successes were obtained exclusively by peaceful means and not by means of force. Especially the speech of 31 October 1937, the last public speech of the defendant as Foreign Minister, frankly represents a resume of his policy of peace. And that this resume was and is correct, the prosecution itself had to admit in this room when, in the words of one of the prosecutors, it expressly denoted Hitler's speech of 5 November 1937 as the turning-point in German foreign policy, a speech, which had been taken by my client as an excuse for his resignation; and the prosecution thereby acknowledged unequivocally that, up to that day, German foreign policy had not been aggressive, had not been a policy of force, nor pursued any plans or intentions of war, but had been thoroughly peaceful and could not have been other, in accordance with the defendant's confession of political and human faith which has been confirmed by all witnesses questioned here and in all of the questionnaires and affidavits contained in my document books.

This declaration of faith was founded upon three basic pillars: human love, love of the fatherland, and love of peace, all three born of and supported by a very deep sense of responsibility, towards himself, towards his God, and towards his people.

When a few days after the occupation of Czechoslovakia, Hitler called the defendant to Vienna from his well-deserved otium cum dignitate on his farm, and revealed to him that he had been selected as Reich-protector for Bohemia and Moravia, he felt himself obliged to answer this call, as a result of his sense of responsibility. He resisted it to begin with and struggled with himself a long time, as he had always been the strictest opponent of interference, not to speak of a more or less forceful annexation, of other nations to the German Reich.

For this reason he also condemned the annexation of Czechoslovakia and the so-called protective alliance (Schutzvertrag) signed by President Hacha, and this without the least knowledge at that time of how it really came about. The true details of this incident became really known to him first here in Nurnberg. Although the more he opposed to accept a public office once more and at his age at that and again to take service under Hitler and his regime of which he heartily disapproved, he became convinced due to his sense of responsibility towards his people and his humane principles, that he should not deny himself to this call. When Hitler explained to him that he had selected him as the sole personality suited for bringing about successful reconciliation intended by him of the Czechoslovakian people with the new conditions and with the German people, he could not close his eyes to the knowledge that he would be given a task, which he could not evade in the interest of the German people, as well as humanity and international understanding. And was it not a task indeed, worth of the "sweat of noble", through a humane and just government and treatment to appease a people which would regard every restriction and encroachment on its liberty and autonomy as the worst injustice imposed, and which would be filled with the bloodiest hatred and resentment against a people perceived as the intolerable oppressor, to reconcile with just this people and the conditions directly created by it. But was not this aim along the same lines as the tendency of insuring and preserving peace? And he could and had to say to himself with justification that, if he refused this task, another man from Hitler's entourage would in all probability be nominated Reich-Protector, who was not able or willing to appease the Czech people by humane and just treatment, and was on the contrary much more inclined to hold it down by force and terror, as actually happened 2½ years later. It was only as a result of these thoughts and reflections that he decided to accept the appointment offered him—eliminating all personal interests and even setting aside the risk that this might be interpreted and held against him in some quarters as an act of approval and support of Hitler and of his regime—after Hitler had explicitly and firmly promised him that he was at all times willing to support his (the defendant's) intended policy of appeasing and reconciling the Czech people by humane and just treatment, which did justice to the interests of the Czech people to the greatest extent. He was conscious of the weight of this task he had accepted. I do not hesitate to admit that it was here a question of a decision, to justify which could—from the point of view put forward here by the British prosecutor that it was immoral to remain in a government which should be rejected because of its amorality—cause embarrassment in the case of a personality formed differently from and with a different attitude in thought and action than that of the defendant v. Neurath, but that, in view of the personality of v. Neurath which I hope has been described to you sufficiently and clearly, and in view of his profound sense of responsibility, this decision was the only possible and logical one. It is actually pertaining to an antique tragedy that the failure of this mission, which had been assumed out of the highest ethical motives only, has brought the defendant v. Neurath into this dock.

I should like to declare, what follows at this point already, concerning the prosecution's attempt to present as unworthy of belief the defendant's assertion that he had assumed his office as Reichs-protector only with the purpose and the object to appease the Czech people by safeguarding to a large extent its interests and its nationality and accordingly to be of service to this people and to its national prosperity, as being disproved by the photostatic documents submitted by the prosecution under No. 3859, consisting of a letter of the defendant to the Chief of the Reich chancellery Lammers dated 31 August 1940:

I believe that the second examination of the defendant, which has been readily granted to me by the Tribunal, has proved that these documents, particularly the two reports annexed to the letter to Lammers, which indeed are not consistent with the designs and tendencies of the defendant as mentioned above, do not form any evidence. Not only do those photostatic copies by no means correspond, according to the definite statement of the defendant, to the contents and the form, e.g., the length, of the originals annexed to the Lammers letter, which had been submitted to the defendant for signature, respectively approved by him, but they provoke more than reasonable doubts whether the photostatic copies of said documents are indeed identical with the annexes to the Lammers letter, owing to the following facts:

In contrast to the custom of all administration offices, both photostatic copies do not contain the references (Aktenzeichen) of the Lammers letter, not even a note that they are annexes to a third paper, let alone to the Lammers letter. And the photostatic copy of the first copy does not bear the defendant's signature, which, according to his definite statement, he had added, when signing the latter to Lammers, beneath the report annexed to the Lammers letter, which report had been done by himself or by his office according to his instructions, and which had been submitted to him in a fair copy. It is striking that it only bears a remark stating the correctness which should have been, but actually was not, signed by a SS-Obersturmfuehrer working in the office of Secretary of State Frank. Those facts warrant the defendant's assertion that, if the reports whereof the photostatic copies have been made have indeed been annexed to the Lammers letter, they have been substituted to the original report of the defendant and to Frank's report as approved in the draft by defendant, in the office of Secretary of State Frank, either by the latter or by his order. Furthermore, the defendant's statement is quite worthy of credit, made in order to explain the fact and the purpose of this Lammers letter and its annexes, viz., that he wanted to try, just as according to the plan contained in General Friderici's report dated 15 October 1940, submitted under USA 65 L–150, to induce Hitler by both reports sent to him as well as by oral report to abstain from a division of the Protectorate territory and from a germanization of the Czech people in any form whatever and to prohibit any similar plans at all, a course which the defendant expressly refused to sustain, for all possible reasons, not in the least in the interest of the Czech nation entrusted to him, and of its national character and unity. These assertions of the defendant are confirmed by the statements of the witness von Holleben in the questionnaire answered by him (*Doc. Book V, No. 156*) of the witness Dr. von Burgsdorf, as well as by the letter of the defendant to Baroness Ritter, as literally quoted by the latter in her affidavit (*Doc. Book No. 3*). And the defendant has actually succeeded in carrying his point, as proved by the report of his conversation with Hitler submitted by the Prosecution. As long as he was in Prague, no steps have been taken for any germanization of the Czech nation, the defendant has even prohibited the discussion of this entire question, as proved by Document 3862–PS submitted by the Prosecution. By this prevention of any division of the Protectorate territory and of any more or less forcible planned germanization of the Czech nation it is actually proved, in the clearest possible manner, how sincere the aims and endeavors of the defendant were to save and to keep the Czech nation and its nationality in its national unity and character, true to his principles and designs, as stated publicly in his article reproduced by the Frankfurter Zeitung of 30 March 1939 (*Doc. Book V, No. 143*) concerning the new order of Central Europe, as forming the rule of conduct for the accomplishment of his duty. He himself defines in this article his task as a fine one, but as a difficult one too. How difficult it really was, how nearly impossible, was to be proved unfortunately but a little while later.

The reason was in the first place that from the beginning not only the full power in the Protectorate had not been transferred to him, that never—quite aside from his subordination under Hitler—had he received a solely decisive and overruling position, but also that his competences and power were not defined sharply enough. It is true that Hitler's decree of 16 March 1939 establishing the Protectorate, and the supplementing decree of 22 March 1939 (*Doc. Book V, Nos. 144 and 145*) had decreed that the Reichprotector was put under the control of the Fuehrer and Reich chancellor, that he was to be the Fuehrer's and the Reich government's sole representative and was to receive his directives from the Fuehrer and Reich chancellor. But at the same time not only certain administrative branches, such as Wehrmacht, communications, postal, telegraphic, and telephone services, were from the beginning placed out of his competence, but also the Reich government and the Reich itself had been given the right to take under their own administration, as Reich administrations so-called "reichseigene"—independent of the Reichprotector, administrations which actually were Reichprotector offices, and to establish, if necessary, Reich offices which did not fall under the Reichprotector's competence. The Reich had also received the right to take measures necessary to maintain security and order in the Protectorate over the head of the Reichprotector. Furthermore—and this is the most important point of all—the right was granted to every one of the many supreme Reich authorities, i.e., not only to the Reich ministries, but, e.g., to the Reichsbank, the Four-Year Plan, the Council of Ministers for Reich Defense and others, to decree laws and organizational measures on their own authority quite independently of the Reich Protector, and thereby to interfere in branches of the administration which, by their nature, belonged to the competence of the Reich Protector, without the Reich Protector having either the right or the possibility to protest against, or prevent such decrees or measures should they be in opposition to his own decrees, measures, and policy. On the contrary it was his duty not only to publish them in the protectorate if asked to do so, but also to supervise their execution. So the position of the Reich protector was—using an example as explanation—by no means the same as, e.g., that of the British Viceroy in India, but corresponded far rather—though to outward appearances a somewhat higher level—to the position of a Reich Governor or the President of a province. This position therefore did not correspond to what had hitherto been understood constitutionally by a protectorate, nor could it, because this so-called Protectorate of Bohemia and Moravia belonged, according to Article 1 of the above mentioned decree of 16 March 1939—and to this I wish to draw particular attention here—to the territory of the German Reich, that is to say it was a part of the German Reich. And it only possessed a certain amount of self-administration and limited autonomy within the Reich as a part of it, whereby the introduction of laws and regulations valid in the rest of the territory of the Reich was a priori understood.

It is self-evident that the greatest difficulties were bound to result very soon from this so vague and indefinite delimitation of the powers and competence of the Reichprotector; difficulties not only for a homogeneous policy directed according to homogeneous points of view and guiding lines, but also for the defendant himself as Reich Protector in governing in the way he wished and which he had embarked upon difficulties and resistances which became more and more acute in the course of time. On the other hand it also follows from the above that the responsibility of the defendant can only be judged from this point of view, i.e., only by taking into account these various competences of all kinds of other authorities. He can never be made responsible for decrees, measures, and actions which he did not decree or order himself, which on the contrary were decreed without his co-operation, without his knowledge, even against his will, by authorities or other offices outside his sphere of power and influence—decrees, measures, and actions which he had neither the right nor the power to prevent and for which he was at most a transit office.

This holds good in the first place for the joint responsibility attributed to him by the Czech prosecution (*USSR 60-a*) for all the actions of Hitler and of the Reich Government before and after the creation of the Protectorate. The assertion which forms the foundation and presupposition for this—the prosecution assertion that Herr v. Neurath, after having given up his post as Reich Foreign Minister, remained a member of the Reich Government—is factually wrong.

I have already proved elsewhere beyond doubt that he was not a member of the Reich government, neither as a minister without employment nor as president of the Secret Cabinet council. And he was just as little a member of the Reich government as Reich Protector. That, too, is certain and has never been claimed by the prosecution before this court. Therewith any part responsibility of the defendant for any actions or measures which preceded or prepared the setting up of the Protectorate is out of the question. I have also already proved elsewhere that his statement to the Czechoslovak Ambassador on 12 March 1938, which he has been reproached with here again as being such a preparatory action, was not false, not deceitful, and was therefore not an action preparing the march in to Czechoslovakia.

If the Czech prosecution further draws the conclusion from Article 5 of the above-mentioned decree of 16 March 1939, that, as Reich Protector, he was responsible without distinction for everything that occurred in the Protectorate during the time he was in office, i.e., from 17 March 1939 to 27 September 1941, this conclusion is also factually wrong and false in view of the actual position with regard to competence in the Protectorate as explained above. There is no system of law in the world according to which one can charge a person with criminal responsibility for occurrences and acts by third persons, in which he did not participate, or cooperate, or which even occurred against his will.

Thus he cannot be made responsible for the fixing of the rate of exchange between the Reichsmark and the Czech crown, because this rate had already been fixed when he took over office, he neither had any hand in fixing it nor had he the power or right to change the rate of exchange, we can here very well leave aside the question whether, as the prosecution maintains without proofs, the rate of exchange was detrimental to the Czech people or not. That, by the way, even if the latter were the case, this would not be a crime according to the charter, and only as such would it be punishable, hardly needs to be stressed.

He can just as little be made responsible for the creation of the customs union and for its execution. This had already been laid down in Article 9 of the decree of 16 March 1939 which says literally: "The Protectorate belongs to the customs area of the German Reich and is subject to its sovereignty as regards customs." This regulation was a natural consequence of the already stressed fact that the Protectorate was a part of the territory of the German Reich. However I would like to draw special attention here to the fact that the defendant, because he regarded the absorption of the Protectorate into the customs area, the customs sovereignty of the Reich, as detrimental and harmful to Czech economy, managed to postpone the execution and realization of this absorption for a year and a half, till 1 October 1940 in spite of all the urgings of the Reich Finance Minister, which is clear proof that the defendant put the interests of the Czech people who had been confided to him above the interests of the German Reich. He had absolutely nothing to do with the economic measures consisting in the alleged transfer of Czech banks and industrial enterprises and the alleged filling of the key positions in them with Germans. Those measures were taken by other offices, especially by the Reich bank and the Plenipotentiary for the Four-Year's Plan, behind his back without his collaboration. Besides, they were the natural result of the circumstance that already in earlier times very important German capital had been invested in these banks and enterprises, and this capital increased after the occupation, because the credits given by other countries were withdrawn by them and taken over by German firms.

Lastly, he had nothing whatever to do with jurisdiction. The latter was under exclusive control of the Reich Minister of Justice. He alone established the German courts including summary courts and prosecuting authorities, he only appointed judges and prosecutors. Herr v. Neurath himself had nothing to do with this and still less with the jurisdiction of the courts, as clearly shown by the ordinances and decrees which established them, especially the decree concerning the execution of criminal jurisdiction of 14 April 1939 (*Doc. Book V, No. 147*).

At this point too, however, it must be emphasized that neither the economic measures nor the establishment of German courts in the Protectorate, which was a part of the German Reich, even remotely fall under the category of crimes punished by this Charter. Just as little do fall under these crimes the alleged intrusions into Czech school organization, the appointment of German school inspectors, measures with which the defendant has been charged in the Czech indictment, and also were not taken by him, but by the German Reich Ministry of Education and Instruction. And the closing of a large number of Czech secondary schools has not been ordered by the defendant at all, nor by the German Reich Ministry, but actually by the Czech government itself, according, it is true, to a suggestion made by the defendant. This measure turned out to be useful and in agreement with the interests of the Czech youth and, therefore, of the Czech intelligentsia and people, by preventing the formation and growing of a large educated proletariat. This danger had become acute because, after the incorporation of the Sudeten German territory into the German Reich in autumn 1938, a very large number of Czech officials and members of the free professions had streamed into the territory of the Protectorate, which, in conjunction with the already existing overcrowding of all higher professions, and in view of the diminution of the Protectorate territory owing to the separation of the Sudeten territory and Slovakia still more diminished the possibilities for getting employment and remuneration for the upgrowing pupils of secondary schools. In addition to this came the closing of universities, in the middle of November 1939, according to a personal order of Hitler. The Czech government could not deny the truth of such considerations of the defendant, and decreed itself the closing of quite a number of schools. The defendant did not exercise any pressure on the Czech government. This has been proved by evidence. The dissolution of Czech gymnastic and sports clubs and similar organizations however was done without knowledge or participation of the defendant, by the police, which was not controlled by him, neither did the confiscation and the use of their assets. It is not even certain, by the way, whether this dissolution has taken place while the defendant was holding office or but after his departure. The dissolution of the Sokol, it must be said, was a real necessity for the government, to protect German interests, and moreover a measure which was taken in the interest of the pacification and reconciliation of the Czech nation too, as the Sokol was, beyond doubt, the focus of anti-German efforts and of the incitement to the Czech people toward an active resistance against everything which was German.

The preceding arguments show how manifold were the encroachments of other administrations and offices on the administration of the Protectorate and, accordingly, the difficulties and resistances against a uniform policy of the defendant. Those were, however, by no means removed, but on the contrary, aggravated by the decree of 1 September concerning the organization of administration and of the German Security Police (*Doc. Book V, No. 149*). This decree was issued, without any previous contact being made with the defendant, by the Council of Ministers for the Reich Defense. Especially in its first part, it is absolutely obscure and misleading. True, it placed all German administration offices and their officials in the Protectorate under the control of the Reichprotector, but this subordination was an administrative one only, i.e., a purely external one, but not at the same time an actual one with a view to the administrative duties which they had to perform. In this respect, things remained unchanged, as results already from the power of the supreme Reich offices according to article 11 of the decree of 16 March 1939 and of the ordinance of 22 March 1939. The difference was only that from now on all administrations and offices established or to be established by other offices were formally attached to the Reichprotector's office and were officially to be known as departments of the administrative designation "The Reichprotector of Bohemia and Moravia". However, this did by no means insure that such attached departments were put in fact under control of the Reichprotector himself, i.e., the defendant, that they received from him their actual directives and orders and had to work according to his views and following his directives. On the contrary, they received their instructions, just as before, from their original Reichoffices and had to observe and to obey only these. For instance, the so-called transportation department constituted accordingly at the Reichsprotektor's, which dealt with the communication system already taken out of the Reichsprotektor's jurisdiction by ordinance of 16 March 1939, was controlled, just as before, by the Reich Ministry of Communications, and not by the Reichsprotektor, and had to get instructions not from him but from the Ministry in Berlin. And the same applied to other sectors, also concerning purely interior administration.

According to this ordinance of 1 September 1939 of the Council of Ministers for the Reich defense, and not, as the Czech prosecution erroneously contends, by a decree of the defendant, a new division of the Protectorate territory was created, into Oberlandratsbezirke with an Oberlandrat at their head, which official is, according to paragraph 6 of the ordinance, the competent administrator for all administrations of interior administration, and subordinate to the Reichsprotektor in an administrative sense; as such he is invested with far-reaching authority, and also controls the Czech authorities in the Protectorate, and this, not by order of the Reichsprotektor, but of the concerned Reich Ministry in Berlin. This too was bound to cause very serious differences and oppositions between the measures taken by those Oberlandraete according to the directives issued to them by the Reich Ministry of the Interior in Berlin and the policy pursued by the defendant. In how far this latter affected and influenced the Czech administrative offices can remain out of consideration, as this decree too and its result, the switching-in of Reich German officials into the activity of the Czech administration, is no crime punishable according to the Charter of this Tribunal. This decree too is but a result of the belonging of the Protectorate to the Reich.

On the other hand, this decree clarified the question of the position of the police within the Protectorate territory, as well of the political as of the security police. This question was quite unsettled until the decree came into force and had led to differences and inconveniences between Herr v. Neurath and his Secretary of State Frank from the first day of the former's activity.

At the time Hitler charged the defendant with the office of the Reich Protectorate, he had, according to the defendant's testimony, assured him of a great plenitude of power, especially for the protection and fullest assistance in such policies of the defendant as were intended to achieve conciliation and balancing of the radical aspirations of the party and other shauvinistic circles. The defendant deduced from this, that as the representative of the Fuehrer in the Protectorate he must and will have a decisive influence in the activity of the police also. According to his own testimony he could not visualize at that time, that by the fact that the police had not expressly and from the beginning been subordinated to him, a large part of the sphere of activity expected by him became illusory from the beginning. By simultaneously appointing Frank—who had just been made higher SS and Police Fuehrer in the Protectorate—to the position of Under Secretary and as such subordinating him to the defendant, he could however derive Hitler's intention to centralize power of authority over the police, if not in his own person, at least under his jurisdiction, e.g., his Under Secretary. In practice however this relation worked out entirely different, since Under Secretary Frank had not the slightest intention to include his superior, the defendant, into the sphere of activity of the Police and recognized only the jurisdiction and power of authority of Himmler, of the Main office for security of the Reich (Reichssicherheitshauptamt), his superior as SS and Police Fuehrer.

This actual condition was determined by law in a decree on 1 September 1939. For this decree unequivocally expresses that the German Security Police, and thereby also the Gestapo, was not subordinated to the Reich Protector. This is already evident purely outwardly from the fact that the decree completely separates both departmental spheres—Administration and Police—by dealing in part I with the building up of a German administration in the Protectorate subordinated to the Reich Protector and dealing in part II completely separately with the German Security Police. This Security police is not under the jurisdiction of the Reich Protector but, as was already reserved in Article V, paragraph 5 of the decree of 16 March 1939, is taken over by the administration of the Reich itself, that is to say, it receives its orders direct from the Chief of Police in Berlin, i.e., Himmler and in part also by the interpolation of the higher SS and Police Chief in Prague. For the relations of the police with the Reich Protector, the second sentence of paragraph II is authoritative. Its wording is as follows: "The organs of the German Security Police are to collect and exploit the results of their investigations in order to notify the Reich Protector and his subordinated offices accordingly about important events and to keep him informed and give him suggestions."

This signifies that the Reich Protector was legally and actually unable to influence the activities of the police in any form whatsoever. He could not oppose their orders, emanating from Berlin, prior to their execution; quite apart from the fact that he never got to see them, he had no authority to oppose them either. He had but one claim and that was to be subsequently informed by the police about measures already taken by them and even that happened—as was proved by the evidence—only in the rarest cases. He did not have the right or the possibility to issue orders to the police himself.

In consequence of this separation of powers and in view of the totally different attitude of Frank as compared to Herr v. Neurath's the sharpest differences and contradictions were inevitably bound to result. For Frank, as a Sudeten German and one of the leaders of the Sudeten Germans, was filled with hatred and revenge against anything that was Czech. He did not want to hear of a reconciliation or an understanding between the German and the Czech peoples, and gave free rein to this anti-Czech frame of mind of his from the first day of his activity.

At first, that is to say, up to the time of the outbreak of the war, the activity of the police was actually slight, so that these opposing viewpoints were not so apparent. Herr v. Neurath could consequently assume that this opposition would gradually diminish and that Frank would conform to his wishes and aspirations and would show himself to be accommodating and he, the defendant, did not yet recognize the necessity of exerting a lawfully founded influence upon the police through Frank. When, however, he finally had to realize—from the gradually increasing activity of the police and their excesses—that his expectations were not being fulfilled, he protested to Hitler orally and by letter, time and time again—as confirmed by the testimony of the witnesses Dr. Voelckers and von Holleben—and implored him to alter this ominous state of affairs and to subordinate the police to him, and him only.

However, all Hitler's promises and assurances proved false and the subordination of the police to Herr v. Neurath did not take place. Yet, he did not want to relinquish the fight so soon, nor despair of the task taken over by him. Now more than ever he wanted to try to impose his ideas and policy and, should he not be successful, at least to diminish and alleviate subsequently the consequences and harshness of the measures taken by the police in general and individually. That, for this purpose, he had the most detailed account given to him personally in all cases of measures and action taken by the police, such as arrests and other excesses insofar as he received information about them, mostly from Czech sources, and that, wherever he could, he exerted his influence for the release of arrested persons and other mitigations is evident from the testimony of all witnesses produced by me, above all from the testimony of Dr. Voelckers, who, as Head of the defendant's office, was continually engaged in receiving such complaints.

This is moreover evident from documents submitted by the prosecution themselves, such as the notes of the defendant about his conference with President Hacha of 26 March 1940 (*App. 5 to supplement No. 1 USSR 60*) and even from the testimony of Bienert, added to the special accusation, who himself was arrested by the police and again released in a very short time upon the intervention of the defendant.

With the one exception of the testimony of Frank of 7 March 1946 submitted during the hearing of evidence, the testimony of all witnesses corresponds on the question of the responsibility of the defendant for the measures taken by the police. This, however, is directly contradictory to Frank's earlier statement. At his interrogation on 30 May 1945 (*Doc. Book V No. 153*) Frank said: "The police, however, was not under the control of the Reich protectorate. Both Gestapo and Security police received their directions and orders directly from the Reichssicherheitshauptamt in Berlin." Frank's statement of 5 May 1945 concerning the students' riots (*Doc. Book V, No. 152*) is also typical for the manner in which the police received its instructions directly from Berlin leaving out the Reich Protectorate. Frank speaks therein of the report about the first demonstrations he had sent to Berlin and in which he had asked for instructions and had received them directly from the Fuehrer's headquarters through the Security Police in Prague to which they were sent by Berlin directly and he, Frank, received them from there. There is no mentioning whatever of the person or even the office of the Reich Protectorate during the entire proceedings, it is an internal affair of the police taking in Frank, the leader of the higher SS and police. Because of the importance of this point I would like to refer explicitly to the statements made by the witnesses von Burgsdorff and Voelckers, who both were, on the basis of their official position, thoroughly conversant with this question during the entire time the defendant was in office, Burgsdorff testified that the police was under Frank who received his orders directly from Himmler. Voelckers said that the defendant had no influence on Frank's activity and thereby on the police. In practice the police and, therefore, also Under Secretary Frank were from the beginning completely independent from the defendant. This was legally sanctioned later through the order of 1 September 1939. All witnesses, also in their written testimonies, testify that the relations of the defendant to Frank had been as bad as imaginable.

It is entirely impossible in this case that the chief of the SD and the Security Police should have been active as political adviser to the defendant. The defendant cannot at all remember a decree from May 1939 about the appointment of this man to which reference is taken in the document by the chief of Security Police (*USSR 487*). In any case, according to his definite statement, he never carried out any function. The document USSR 487 therefore does not appear to have any proof of evidence. The copy submitted to me by the tribunal is dated 21 July 1943. That alone proves that the appointment of the SD leader, if it occurred at all, was not given any effect during the defendant's entire time in office. Aside from the date, however, the result is that, in "Reference to the letter * * * ", this appointment does not at all concern a political adviser to the Reich Protector in person but the Under Secretary for the Security Service, namely Frank. The address "Der Herr Reichs-protector" is to be understood in a way, that is, does not mean the person but the office. In the German government circles it was customary to speak of the "Herr" Reichminister, etc., even though he was not meant personally but any department of his office. It is entirely credible and probable that the SD leader was appointed political adviser to the Under Secretary, who at the same time was Under Secretary to the office of the defendant and independent Under Secretary to the Security Service.

Just from the so-called "warning" given at the end of August 1939, with which the tribunal reproached my client, can be seen how he himself felt about the ways and means of easing the minds of the population and to hinder, that is, prevent violence and insubordination. According to his sworn testimony, the defendant thereby succeeded in discouraging the population from committing acts of violence and especially prevent acts of sabotage, which were to be expected in this time of political high tension before the war, and thus in preventing harsh police and legal measures which would embitter the population even more. It is doubtlessly more human to issue such a warning and thereby to prevent the committing of crimes instead of letting crimes be committed without previous warning and afterwards give severe punishment. That acts of sabotage, if it was impossible to prevent them, were severely punished in those times, would certainly have been acknowledged also in any other country and is a matter of course. As the defendant testified the warning had fulfilled its purpose. No special punishments were threatened or determined, it contained no special threats of punishment whatever, but referred, as the wording proves, to criminal law already in force.

The sentence, that the responsibility for all acts of sabotage affected not only the culprit but the entire Czech population, is, of course, concerned only with the moral responsibility and not the legal one, as was also confirmed by the defendant.

It means that in the case of repeated heavy acts of sabotage general measures would be taken in the respective territories, as for example, earlier curfew, ban on going out, or general stoppage of traffic or electric current, under which the entire population would have to suffer. A collective responsibility in the legal sense would have had to be formulated much more concretely. It was expressly mentioned at the beginning of the proclamation that everyone who commits the cited crimes thereby proves himself to be an enemy of the Reich and has to be punished accordingly. This sentence especially shows that the legal treatment of such sabotage acts would have been carried out individually. At that time nobody in Prague not even the chief of police would have thought of the idea to decree a general punishment, or even, the prosecution asserted without any evidence whatever, to establish the hostage system. In this connection I also wish to refer to the statements made by the witness von Holleben (*Doc. Book V, No. 158*) in which he states: "Neurath therefore always refused to make a person responsible for acts committed by somebody else."

From all that has been said previously, results further show that the defendant von Neurath cannot be made responsible for the arrests made at the time of the occupation of the Czech territory, nor for the arrests of, as the prosecution asserts, 8,000 prominent Czechs as hostages and their being taken to concentration camps, or their execution at the outbreak of the war.

The arrests, according to the defendant's testimony with which Frank's testimony agrees, were made on direct order from Berlin without knowledge and information of not only the defendant, but also of Frank himself. Bienert's contradicting testimony presented by the prosecution is objectively incorrect and is based on completely illogical and false deductions. His deduction that this entire action was under the defendant's direction because his order for Bienert's release had been issued already four hours after his arrest is without any logic and is objectively wrong.

On the basis of the evidence it is finally irrefutable that the defendant is not responsible for the order to shoot nine students and to arrest approximately 1,200 students during the night from the 16th to the 17th of November 1939, that these measures actually to be called terror actions had been ordered during his absence from Prague without his knowledge by Hitler personally and had been carried out on his direct order by Frank, and that also the proclamation of 17 November 1939 announcing it was neither issued nor signed by him, that on the contrary his name under it had been misused. As it is unanimously proved by the testimony of the defendant himself, by that of the witness Dr. Voelckers, who accompanied the defendant on his trip to Berlin on 16 November 1939, the day of the students riots, and had returned from Berlin to Prague with him together but on the afternoon of the 17th, furthermore by the written testimony of Mr. v. Holleben and finally by the affidavit of the defendant's secretary, Miss Friedrich (*Doc. Book V, No. 159*) and of the Baroness Ritter, the defendant was in the night of the 16th to 17th November when the shootings and arrests took place not even in Prague but in Berlin and the publication of those incidents was already posted to the house walls of Prague when the defendant returned to Prague. The defendant is not in the least responsible for these atrocities. The order for it as well as the simultaneous order for the closing of the universities had on the contrary been given directly to Frank by Hitler in Berlin, and this as the witness Voelckers expressly confirms, in the absence and without the knowledge of the defendant. What value can, in contrast to that, be ascribed to Dr. Havelka's testimony presented by the prosecution is self evident.

The credibility of this witness Havelka, as well as of all the other Czech testimonies submitted by the prosecution, must in general be examined with the very greatest caution. They are subject from the first to two very serious objections. Firstly, all these witnesses are members of the former autonomous Czech government, i.e., so-called collaborationists who are in jail to-day for this reason and are awaiting sentence. It is humanly only too readily understandable if to-day they not only see the conditions then in a different light, judge them differently from what they really were, and involuntarily mix in their memory the terrible things which happened after Herr v. Neurath had left Prague with the events while he was there. This results in a haziness of their memory. We must also not overlook the fact that, in a quite natural effort, they hope by incriminating Herr v. Neurath to clear themselves. Added to this is the fact which is almost more important yet, that they had no knowledge whatsoever and could have none of the internal factual and legal conditions within the office of the Reichsprotector and that they therefore are not able to judge to what extent the defendant himself was really the man who issued the individual decrees and orders or brought them about. One example shows this very clearly: In the witness Kalfus's testimony it is alleged that the defendant was responsible for the customs union between the Protectorate and the German Reich. I hereby wish to refer only to the fact that already in Hitler's decree of 16 March 1939 it had been expressly announced that the Protectorate belongs to the customs district of the Reich. The witness Bienert further asserts that it was Herr v. Neurath who subordinated to the Germans the political administration of Bohemia and Moravia—which means state as well as communal administration. This is, however, also objectively wrong. As I have already proved, this subordination was ordered by the decree of 1 September 1939 which was not issued by the defendant but by the ministerial council of ministers for the defense of the Reich. These examples should suffice to show how little credible all these testimonies are and how little the witnesses were informed about the actual organization and competences within the office of the Reichsprotector. The repeated assertion of the witnesses that the arrest and many other measures of force by the Gestapo against the Czech population was done on the order or instruction of the defendant personally is for example either a deliberate falsehood or proof of their ignorance of even the published official decrees which were announced in the Czech official gazette. Because the Gestapo, as I have already proved, was not under the command of the defendant. The conclusions from this for the credibility of the witnesses are self evident. It is obvious that in contrast with it the sworn testimony of the defendant and of the witnesses, presented by me, together with the pertaining decrees submitted deserve much more credibility.

The allegation of the Czech indictment and of the testimony on which it is based that Herr von Neurath, in the middle of November 1939, ordered the closing of the universities has thus been disproved as objectively wrong. In fact, the closing of the universities took place on the express order of Hitler. As the evidence has shown beyond any doubt the defendant has immediately protested to Hitler and succeeded in obtaining his promise to reopen the universities after one year instead of only after three years. The defendant cannot be blamed for the part that Hitler then did not keep his promise. His efforts for the revocation of the closing of the universities prove however how much he was interested in maintaining the educational standard and the intellectual class of the Czech nation.

And just as in this case the defendant worked wherever he could for the Czech nation in its entity and for the individual. This applies specially to the harmful activity of the police and the Gestapo as far as he received information about it. According to his own testimony which is confirmed by that of the witness Dr. Voelckers, he had, immediately after the arrest of the students in the middle of November 1939, used all his influence with all energy and continually for their release and as we have heard here not only out of his own mouth, but also from Dr. Voelckers, he succeeded in obtaining the release of almost all the students up to the time he left Prague on 27 September 1941. And he worked in the same way continuously for the release of about 8,000 prominent Czechs who were arrested at the beginning of the war. As proved by his own testimony these arrests were not ordered by him, as is asserted contrary to the truth by the Czech witnesses Bienert, Krejci, and Havelka, not even by Frank or by another higher SS or police chief in the Protectorate, but by Berlin directly. It is due, by the way, to the defendant that in 1941 the order Hitler issued at Frank's and Himmler's instigation for the removal and arrest of the then Czech Prime Minister General Elias was rescinded by Hitler because of his personal intervention. Only after he had left was Elias arrested by Heydrich and later condemned to death by the peoples court.

Definitely wrong is the allegation of the Czech witness Bienert that the defendant had arranged the transportation of Czech workers into the Reich, that is, deported Czech workers by force into Germany. It is rather true that during the whole term of office of the defendant not a single Czech worker was deported by force to Germany. For the rest, until 27 September 1941, no compulsory deportations of laborers had yet taken place in any territory occupied by Germany. That happened but later. But many Czech laborers have voluntarily and gladly gone to the Reich and accepted jobs there, as they earned, owing to the established currency exchange rate and to higher wages, much more than in Prague, and could send to their relatives in the Protectorate very important parts of their earnings.

When, further on, the Czech prosecution wants to charge the defendant with the sending by the Gestapo of arrested persons to concentration camps, and with the ill treatments committed there on these individuals, then it must be established with the utmost precision that until 27 September 1941, the end of the official activity of the defendant in the Protectorate, there was not even a single concentration camp in the Protectorate. They all have been established under his successor only after his departure. The decree too concerning security and preventive custody, which the Czech prosecution appears to charge him with too, has as shown by the copy annexed to the Czech report (*USSR 60*) been issued, but after his departure, viz., on 9 March 1942.

Lastly, concerning the charges of the indictment about the alleged measures taken by the defendant against the Jews, in this point too the representation of the indictment does not fit the facts and is shown to be erroneous on closer examination of the documents submitted by the prosecution itself.

Of all the 21 decrees contained in the British Document Book 12 B, only 4 have been signed by the defendant himself, 6 have been issued by the Reich Ministry directly, and 10 by secretary of state Frank or his direct subordinate Dr. v. Burgsdorff, 1 by the Czech State President Hacha. The first decree signed by Herr v. Neurath himself, of 21 June 1939, which contained nothing but the introduction of the regulations concerning treatment of Jewish property, valid for the entire German Reich, into the Protectorate, which, since 16 March 1939, was a part of the German Reich too, had been prescribed to the defendant from Berlin at the very beginning of his assuming of office. The fact however, that it was published, but on 21 June 1939, 3 months later, proves the correctness of his statement that he wanted to give the Jews time to prepare themselves for the introduction of the Jewish legislation as in force throughout the Reich. Its postponement to that day took place in the very interest of the Jews. The 2d decree issued by the defendant himself of 16 September 1940 only prescribed an obligation to declare securities, i.e., mortgages, which were Jewish property, and corresponded to the decrees of the same or similar kind issued in the German Reich too and which were applicable to all German nationals. The 3d decree issued and signed by himself, as well as the 4th, of 14 September 1940, aimed at rendering possible and facilitating Jewish emigration, as clearly shown by their contents; an emigration which the development of happenings in the Reich had made inevitable. Both decrees had accordingly been issued in the interest of the Jews themselves, and prove that the defendant had no antisemitic views. All the documents submitted by me which refer to this matter, especially the newspaper report concerning the boycott of the Jews in the spring of 1933 (*Doc. Book I, No. 9*) and the submitted depositions of witnesses, show that he did not approve of the measures taken against the Jews, particularly of the violent ones, but opposed them. As shown especially by the deposition of the witness Dr. Koepcke, such measures would have been in contradiction with his completely Christian and human attitude and ideology. It is a matter of fact that until his departure from Prague not a single synagogue has been closed and that no religious restrictions against the Jews have been decreed. It does not need any particular proof that the defendant cannot be made responsible for the six ordinances issued by the Reich Ministry of the Interior. But neither does he bear any responsibility for the decrees signed by Frank and by Herr v. Burgsdorff, in view of the independent position of Secretary of State Frank and the competence of the police concerning all Jewish matters, which I have described. In opposition to the assertions of the indictment it must be particularly emphasized that, according to his own sworn deposition, no persecution of the Jews has occurred during his entire tenure of office.

His aforementioned human and Christian attitude and ideology makes the assertions of the Czech report of September 1945 (*998–PS*) concerning an alleged hostility of the defendant against the Church appear from the beginning as hardly likely. It is true that the Czech indictment of 14 November 1945 (*USSR 60*) does not make this report an object of an accusation, but nevertheless, I should like to speak about it in a short way. It is proved by evidence that the relations between Herr v. Neurath and the Archbishop of Prague have been very good, even friendly and that the latter has explicitly thanked the defendant for his support of the churches, and this would certainly not have been the case if he had been opposed to the Church or if he had suppressed the churches, their organizations, and clergymen or persecuted them in any way. It is certainly not an extraordinary occurrence that there may have been differences in administrative matters, as has obviously been the case according to the letter of the Archbishop submitted by the prosecution—State and Church always have had differences with one another at all times and in all countries—but this cannot be construed as implying, on the defendant's side, a policy opposed to the Church. It may be right that clergymen have been arrested, but firstly these arrests have been ordered not by the defendant, but by the police, which was not under his control, and secondly—insofar the defendant has known them at all—not because of any church activity, but because of political intrigues. Neither is it clear from the mentioned Czech report whether the alleged actions against the Church, its organizations, and ministers have actually taken place during the defendant's tenure of office. The evidence has shown that he did not decree any antieclesiastical or antireligious measures, pilgrimages to the Czech religious relics, e.g., were especially permitted by him.

Here I would also like to emphasize that the defendant is not to be charged with any offense against Czech national feeling. In contrast to the statement of the prosecution he did not destroy or close any Masaryk houses, nor did he destroy or remove any monuments of national personalities, what the prosecution would like to reproach him with. Insofar as Masaryk houses were closed, the SS and the police which were not under his jurisdiction are exclusively responsible for it. His attitude towards the Czech national feeling is best illustrated by the fact that he especially permitted the deposition of wreaths at the foot of Masaryk monuments.

Just as little did the defendant take measures hostile to culture in spite of all efforts made in that direction by radical elements. The Czech theater life was not touched and remained free, as well as Czech literature which was not suppressed or encroached, with the natural exception of forbidding such things that were of an anti-German or revolting character. Also the press, which by the way was not controlled and censured by him but by the Reich Ministry for Propaganda, was not submitted to other limitations than the German press, as all in all the defendant's efforts were directed towards conserving and encouraging Czech national cultural life in its characteristic qualities and independence. I believe it is not necessary for me to go still further into details about that subject and that I can confine myself with referring to the defendant's own statements and the statements of the German witnesses heard on this subject.

From these statements it will, however, also be clearly seen what difficulties and resistance from certain radical circles and authorities, and not least from his own Under Secretary Frank, he was up against in his above mentioned efforts and in all his policy towards the Czech people. If one wishes to draw up a summary of his official activities, we may say that his entire life in Prague was one single fight against the forces inspired and led by Himmler, a fight that was the more difficult because he did not actually possess full powers in the Protectorate, and the offices and authorities which were the most important and influential ones in the field of home politics, the entire police and Gestapo, were not under his authority. Nevertheless he did not abandon this fight, and he did not get tired of protesting to Hitler repeatedly and demanding redress, in many cases successfully, in others not. He fought up to the end, and did not let himself be discouraged by failures and remained faithful to his policy of reconciliation and settlement, of pacification and conservation of the Czech people, and of its national characteristics. And when he had to recognize in Autumn 1941, here again, that any further fight was hopeless, that Himmler's influence on Hitler was greater than his own, and that Hitler had now decided to change over to a policy of force and terror and to send to Prague for the purpose Heydrich who was known as a bloodhound, he immediately drew his conclusions as in the winter of 1937–1938 as Minister for Foreign Affairs, and resigned.

He left Prague and finally retired to private life. What an impression this resignation made on the Czech people and even in circles hostile to Germany, and what people took it to mean, follows with a clarity which can hardly be surpassed from the fact that the Czech report (*USSR 60*) which was truly not dictated by pro-German sentiments or love for my client, characterized this departure of my client as a "geheeriger Schlag" in the German text, "a heavy blow" in the English text, a fact which fundamentally disavows its own accusations against Herr von Neurath. And in fact I believe I have proved that, during and as a result of his administration, the defendant was not guilty personally of a single crime against humanity punishable under the charter of this Court and only such a crime could, after all, come into question here. And here the basic question of this trial also arises, which is whether the defendant rendered himself guilty of supporting or aiding Hitler and his helpers—in a manner punishable under the Charter—in committing their crimes, by accepting the office of Reichprotector and by keeping it, in spite of the war launched by Hitler a few months after his assumption of office and in spite of the events in November 1939 and several other occurrences. The prosecution answers this question in the affirmative. But can an objective, unprejudiced judgment of things really answer this question in the affirmative? One thing should be unassailably certain after what we have heard here from the defendant himself and from the witnesses questioned on the subject by me and from the affidavits presented. Just as little as external, material reasons moved Herr von Neurath at that time to enter Hitler's government and remain in it, just as little did such reasons enter into his acceptance of the Reich protectorate. Evidence for this is found already in the fact alone that he declined the endowment which Hitler had intended for his 70th birthday in 1943, and when this was not possible, he had this endowment placed in his bank as I have proved to you through the letter from his bank (*Doc. Book V, Nos. 160 and 161*) and never touched one penny of it. And how little the pomposity of the position of the Reich protector attracted or much less suited him can unmistakably be seen from his letter of 14 October 1939 to the witness Dr. Koepcke (*Doc. Book V, No. 130*) in which he calls it an absolute prison. In both cases, as has been proved not only by the defendant's own statements, but also by the statements of all the witnesses and documents which I have introduced, the motive and the reason for the acceptance of his position and his endurance in it was not per chance that he approved of the ideologies of the Nazi regime with all its methods and wanted to support them, to the contrary, his high ethical and moral convictions which sprang from his deep sense of responsibility towards his people as man and statesman, these caused him to do it. Since he was not in the position to and had not the power to remove Hitler and the Nazi government, he considered it as his duty at least in his small sphere within the compass and limits of his power in the field under his leadership to fight the Nazi tendencies which he also despised and to prevent their materialization, as far as his strength permitted. Can one, so I ask, really reproach Herr von Neurath for this, can one condemn him because the task he had assumed with a sense of moral duty and a consciousness of responsibility was beyond his strength and he was frustrated by it?

For once, Your Honors, free yourselves from all juridical and political prejudices, from all the retrospective considerations of things with their in any case very uncertain deductions and think yourselves into the soul of this man, into the world of thought, into the conception of life of this man. Brought up in the house of his parents which was filled not only with Christian, humane, and through and through decent ideas but also with the sense of responsibility towards its German people, he had grown up and reached the age of 60 in civil service under the various governments, first under the imperial, then under the changing governments of the republic. Without caring for their political trends, without asking whether they were conservative, democratic, or social democratic, he had served them, he carried out the tasks assigned to him in his sphere of labor. As diplomat, as official of the Reich's Foreign Service the field of internal politics was remote from him, he considered it his only duty to serve his people as such, regardless of its momentary governments and their inner-political attitude. And thus, much against his personal wishes, upon Hindenburg's call in the hour of distress, he took over the Foreign Ministry and thereby entered the government of the Reich and remained in it also after Hitler was appointed, not as the representative of a certain political party, but as Hindenburg's special confidant in the field of Foreign Politics. He was the guarantor of the Reich's peace policy, the rock of bronze in this field. His whole education, his sense of responsibility towards his people would not permit him to do anything else than to remain at his post when he was drawn into the whirl and dynamics of the National Socialistic movement and had to see how this movement turned in directions and made use of means which he too could only condemn. But exactly as was the case with other respectable and patriotic Germans whose sense of responsibility and duty to their own people had driven them to the decision to remove Hitler and the Nazi regime by force, so it was with the defendant whose sense of responsibility and sense of duty not only towards himself, but also towards his people, forced him to set aside his personal abhorrence of the immorality of this regime and, by remaining in office and continuing to conduct it according to his principles, to fight actively against this immorality and thus to keep it away at least from the section controlled by him and to protect his German people from this immorality of the Nazi regime and its consequences, namely war, as long as he had this possibility. And when then one and one-half years later, after his resignation, the call came to him again to accept a position, this time as Reich-protector of Bohemia and Moravia and Hitler declared to him that he had selected expressly him for this position, because he considered him the only suitable person to carry out his intended policies of a conciliation and reconciliation of the Czech people with new conditions and the German people, the very same sense of duty and responsibility forced him to follow this call, for would he not have to deduce from the fact that Hitler, in spite of knowing about his declining attitude toward the National Socialist regime, his policies, and his expedients, desired to intrust him with this task, that he really and honestly meant to effect a reconciliation and appeasement of the Czech people? Thus he confronted a task, the achievement of which would not only be of the highest benefit to his own, but also to the foreign people. A task, which was not only to serve the conciliation of two nations, but also the ideal of humanity and Christian brotherly love as well as to protect the Czech people from the pernicious methods of the Nazi regime. And now I ask: Is it not at least just as moral and ethical to pledge one's self and one's person for such a goal, to actively if only to a limited extent work against this regime, recognized as immoral and corrupt by a cooperation, outwardly appearing as such, to prevent the use of the expedients of this system, thereby saving innocent people from misery and death, as to grumblingly retreat because of personal aversion and to watch inactively how this regime rages against humanity without restraint.

Not everyone is of a violent nature, is a revolutionary, who would use force against the hated system and its executors. And do not forget, Your Honors, that at that time, under Hitler's autocratic regime only these two possibilities existed, to work really actively and positively against the Nazi regime and its terror. Under this regime no other possibilities existed to fight against a hated and accursed government, as this is the case in democratic free countries with free and independent selected parliaments. In Hitler Germany any form of active or even public opposition only meant a completely useless sacrifice. And therefore I beg you, Your Honors, in the judging of the matter and in answering my question, separate yourselves from the democratic conditions and circumstances which are so familiar to you, but which are completely incomparable with the German conditions under Hitler at that time. A fact, the non-consideration of which, already caused some disaster up to date. And did not the defendant v. Neurath save the freedom and lives of thousands of people whose freedom and lives would have been irretrievably lost without him, especially by accepting the office of the Reich protector and which he kept, despite the fact that he had to realize that he could not accomplish this task without being guilty himself, that he did not have at his service the necessary means for its accomplishment, but that he in spite of it continued his fight against the terror of the Nazi regime? Is this not worth a thousand times, is it not more, much more, moral and ethical than if he had retired right away, full of abhorrence and moral indignation?

I do not hesitate to answer this question in the affirmative, like my first question, and to express my conviction that no one can condemn me for this. Or shall a Sophoclean tragedy be unfolded before us, here in the fate of the defendant in which a man becomes guilty owing to no fault of his own, because he obeyed his conscience and his sense of responsibility?

Your Honors, I believe I have shown and proved in my preceding statements that not one of the actions of which the Prosecution accuse my client is criminal in the sense of the Charter and that not one of these actions by the defendant aimed intentionally at committing a crime in the sense of the Charter of this high tribunal, that, in other words there is no criminal action either objectively or subjectively. But I believe I have shown also, over and above this, that all my client's actions in their totality aimed at just the opposite of what the Prosecution imputes to them, namely, not the perpetration, but the prevention of just such actions as the Charter defines as punishable crimes, be they crimes of planning, preparation, or the waging of aggressive wars, be they war crimes or crimes against humanity.

But there still remains one thing for me to do. To draw the conclusion to all that, how impossible, how paradoxical even the principles of the conspiracy are with regard to my client. For the conspiracy has for its indispensable supposition, that each participant not only wants the criminal objective, but also that he upon entering into the conspiracy, by his participation, sanctions or will sanction from the start, the preparatory actions, or those in any way connected with it of the other members. But when, as the prosecution intentionally is doing, one regards this as evidence of approving the criminal objective and all preparatory actions for its achievement by each one of the other members in their official capacity—in international law proved alone by the fact of simply accepting or remaining in office in spite of knowing the criminal aims—and for this fact alone institutes a criminal co-responsibility of each individual, the consequence inexorably follows with forceful logic, that the application of the principle of co-responsibility due to the acceptance of an office or of simply staying therein without any consideration as to the extent of his decent and ethical reasons, not only calls for motives and purposes for the punishment of the one, who disapproves these criminal intentions, plans and actions of the others, but even fights it actively and for this reason only accepted his appointment or remained in his position, as it was the case with the defendant v. Neurath.

I do not need to prove, My Lords, that such a result is contrary to any not only natural, but also legal sense and thought, that it is contrary to that which this high Tribunal has to strive for and is striving for, that it is contrary to any moral and ethical postulate. This Tribunal not only represents Justice, the legal and ethical conscience of all civilized nations on earth, but ought to show the way to universal Peace to the coming generations. But only then can this task be fulfilled, when you show mankind once more that any generalization, any leveling, any treatment, including judgment and conviction of people and of their activities based on corporative, I should like to say, even gregarious concepts and not on the personality, the will, and the designs of the individual, is of evil. Such treatment denies the holiness of the individual and is bound to lead to the adoration of mere Might. And such adoration of Might, such belief in Might has actually been the deep cause of the terrible events which once more have been unrolled here. You can only then do justice to your double task—to punish there where chastisement should be applied according to divine and humane law, and at the same time to show Mankind the way to international Peace—if by your sentence you take away from Mankind the belief in Might and give back, instead of this belief, to all nations on earth and, not in the last, to the German nation, the belief in and the respect to the holiness of the individual, which the Lord once created in his image. Convinced by the truth of such knowledge, I now place with confidence the fate of my client, the defendant Baron von Neurath, in your hands.

2. FINAL PLEA by Constantin von Neurath

Firm in the conviction that truth and justice will prevail before this High Tribunal over all hatred, slander, and misrepresentation, I believe that I should add only this one thing to the words of my defense counsel: My life was consecrated to truth and honor, to the maintenance of peace and the attainment of understanding among peoples, to humanity and justice. I stand with a clear conscience not only before myself but before history and the German people.

Nevertheless, if the verdict of this Tribunal should be guilty, I shall be able to bear even this and shall take it upon myself as a last sacrifice on behalf of my people, whom it was the meaning and substance of my entire being to serve.

XXIII. HANS FRITZSCHE

1. FINAL ARGUMENT by Dr. Heinz Fritz, Defense Counsel

Mr. President—Your Honors!

The result of the evidence in the case of Fritzsche is a relatively clear one. Although I am one of the last to plead it cannot be avoided to go into legal problems more closely. Above all these problems arise from the fact that Fritzsche was characterized by the Prosecution in a particularly striking manner as an accomplice.

However, at first I must examine what position Fritzsche had in the Propaganda Ministry and what part he played in the German propaganda in general. It is these facts which ought to be conclusive in determining what he supposedly played in the alleged conspiracy.

At the beginning of the trial Mr. Albrecht submitted as evidence the organizational structure of the government of the Third Reich as of March 1945 in the form of a diagram. Mr. Albrecht admitted himself that Fritzsche's name did not appear in it in the position of one of the main leaders of the Propaganda Ministry. It is true, he added, that his importance had been greater than one would be led to think from his position as shown on this diagram. He closed his statements by saying that evidence to this effect would be submitted to the Tribunal.

Has this been done and could the hearing of evidence really prove that Fritzsche had greater importance?

At the session of 28 February 1946 Sir David Maxwell-Fyfe introduced as evidence a "compilation of the elements of guilt" which in a particularly impressive manner demonstrates in how far the individual defendants are connected with the facts of which they are to be guilty in the opinion of the prosecution. The classification of the individual defendants follows from the table which is attached to this compilation as appendix A. The Tribunal will have noticed that the defendant Fritzsche is the only one not to appear on this table at all. From this follows that he does not belong to any of the organizations which are to be declared criminal here.

A look at the organizational plan of the Propaganda Ministry which was submitted in Brief E by the Prosecution also shows especially clearly that even in his last position as ministerial director and chief of the broadcasting division he was only one of 12 officials of the same rank. Such a position in itself excludes a priori the assumption that he could have determined the principles of policy, the principles of news presentation, and the principles of what may or may not become known to Germany and the world. It is true Captain Sprecher pointed out—evidently in order to raise Fritzsche's importance—that the chief of the German press division held a "unique" position, but he did not pass over the fact in silence that he had predecessors and successors in this allegedly unique office.

When in November 1942 Fritzsche was appointed by Goebbels as chief of the broadcasting division, he did not obtain a higher position in the civil service hierarchy as a result of it. His activity was purely administrative. It concerned technical-organizational questions. In his affidavit of 7 January 1946 my client describes the administrative work connected with it, he also mentions his numerous predecessors. Did it occur to anybody to indict also these persons as major war criminals or to call them supreme commanders of a propaganda instrument? Since this is not the case, the conclusion must probably be drawn that it was not Fritzsche's official position which formed the basis for the indictment.

Justice Jackson, too, pointed out that within the framework of the organizations under indictment here, not all administrative civil service employees and division chiefs or state officials have been included as a whole; only the Reich Cabinet was named. Therefore, it can also not be imputed to Fritzsche—as is allegedly possible in the case of the members of the organizations—that from his position alone and the close connection of the individual members of the organizations it follows that they must have known and been completely clear about the plans of the alleged conspiracy by virtue of their membership alone.

During Fritzsche's cross-examination an attempt was also made by the Russian prosecution to magnify Fritzsche's position. It introduced three protocols as evidence, namely the interrogations of the witnesses Schoerner, Foss, and Stahel. However, these documents did not produce any supporting evidence. It is true that these depositions were only used to hold isolated passages from them against the defendant. Because of this limitation I could forego the cross-examination of the three persons who signed these protocols. But Fritzsche did not fail to express his opinion on those passages which were held up to him while he was being questioned on the witness stand. In this connection I have to point to only one more thing: These three persons did not even claim to have had any insight into the internal organization of the Propaganda Ministry. None of the three depositions contains any definite statement by Fritzsche. On the contrary, these depositions contain mere judgments, judgments which we do not want to know from witnesses, especially not in a case where they cannot furnish any kind of substantiated facts. For this reason alone their value as evidence must be denied. But aside from that aspect, they represent completely wrong judgments. They can by no means be derived from Fritzsche's own statements which were submitted in this trial by the Prosecution—namely from his radio addresses.

If evidence against the defendant Fritzsche bearing out these mere judgments could have been submitted, then, in view of the fact that the Prosecution could have obtained all of his radio addresses, it would have been more to the point to submit here those statements made by him which would have enabled the Tribunal to form its own judgment. The transcripts of the interrogations only contain the shortly summarizing statement that Fritzsche was Goebbels' "deputy." I confronted the witness von Schirmeister with this assertion and he termed it as pure nonsense. Fritzsche had to say the same on the witness stand. There can be no doubt that the concurring testimony of both witnesses is correct. Finally, there are still hundreds of others who formerly worked in this ministry who could verify the truthfulness of these statements with their own knowledge.

I can state therefore that the attempt at enlarging Fritzsche's position—contrary to the facts given in the organizational chart of the Propaganda Ministry as submitted by Mr. Albrecht—is a complete failure.

Beyond that, the hearing of evidence has shown that Fritzsche was not the creator of the great control apparatus for the German press, as was furthermore claimed by the Prosecution. On the contrary, it was Dr. Goebbels and others of his associates. Fritzsche could not have been the creator because of the time element alone.

In the first place, he had been a regular employee for years, he then became a consultant (Referent) and it was only since the winter of 1938–39 that he was one of the twelve division chiefs of the Ministry. When he became chief of the German press division, the policy of the press was set by Reich Press Chief Dr. Dietrich. As has been said already, he became chief of the broadcasting division only in November 1942 and could not create anything fundamentally new there. Neither Goebbels nor Dietrich ever allowed the control of the German press and radio to be taken out of their hands. With regard to the details I want to refer to the testimony of the witness von Schirmeister.

The fact that Fritzsche could have been neither the creator of the press division nor a leader of the German propaganda as far as it emanated officially from the Ministry is also shown by the other numerous statements both by Fritzsche, when questioned about it on the witness stand, and by the witness von Schirmeister.

During his entire activity, Fritzsche actually never possessed any authority to give orders in these fields, and could not have had it owing to his rank in civil service, which would justify his being called the creator or leader of the press and radio in the Third Reich. On the contrary, between Dr. Goebbels, Dr. Dietrich, and him there were quite a number of other higher intermediary posts. In this connection I can also refer to what Lieutenant Meltzer stated in general about the importance of a state secretary in the Reich Propaganda Ministry and a Reich Press Chief when he referred to an affidavit by Amann of 19 December 1945: He pointed out that the holders of these positions exercised complete control over the news service in Germany. Fritzsche never held any of these positions. Incidentally, the Propaganda Ministry did not have only one, but three state secretaries. Besides, Dr. Goebbels had surrounded himself with a Ministry Staff (Ministeramt). I believe it is appropriate to point here to this low rank because the Prosecution thought, as it did in other cases, for instance in the case of the defendant Goering, to be able to conclude a special responsibility from a high rank, i.e., from a defendant's external position alone. Therefore, one can by no means start from the assumption that Fritzsche exerted any decisive influence upon propaganda in general and upon the policies which were pursued by the press and radio.

The tasks which Fritzsche accomplished on the technical side of the news system involved him only as a journalist and expert. They had nothing to do with the contents of the propaganda which was pursued by the state leadership. In this respect, too, he was only a person who carried out directives. It is true that he set up the technical organization of the journalist news offices. He thereby modernized and perfected them. It is also true that this news system played an important part later in the war. In that respect Fritzsche's work extended only over the period from 1933 to 1938. But it is a fact that in those years he did not have the least influence upon the contents and political trend of the news, particularly in view of the fact that he was a mere employee at that time.

I make these references to Fritzsche's official position within the Propaganda Ministry also for another reason. In admitting what he did and said and wanting to assume full responsibility for it—Fritzsche had an opportunity to explain in detail the cause for and contents of all the excerpts from his radio addresses submitted to him—he cannot, on the other hand, answer for theses which were championed by other offices of the state propaganda apparatus—also for those in his own Ministry. All the less can he answer for the unorganized propaganda of the party. Fritzsche described the various controlled and uncontrolled kinds of propaganda of the Third Reich and pointed out their effects. May I remind the Tribunal that the witness von Schirmeister testified to the effect that even Goebbels could not do anything with the "party doctrines" and the "myth" in the field of propaganda. According to the witness, Goebbels did not regard them as things with which to lure the masses. When the defendant Speer mentioned the secret agitation about the miracle weapons, he could point to other sources of unorganized party propaganda. For all that, Fritzsche does not bear any responsibility. His official position was not influential enough to be able to fight effectively against all faulty conditions and abuses. Therefore, his repeated attempt to have the "Stuermer" prohibited—he considered this paper an excellent means of anti-German propaganda—remained without success. The party propaganda with all its practical consequences played a much more important part than that which Fritzsche with his comparatively limited functions could ever have played. I recall the fact, that according to Fritzsche's testimony, even Dr. Goebbels was afraid of Bormann. This was explained by the portentous sentence according to which, it was not the state which had to give orders to the party, but inversely the party to the state.

The hearing of evidence—especially the examination of the witness von Schirmeister—has thus shown without any doubt that the decisive directives for the propaganda of the third Reich came from other agencies. Goebbels, with regard to whom Fritzsche kept his distance personally, did not allow any of the subordinate officials in his ministry to interfere with his plans. It has been seen that he carried out his plans with the authority of his position, with the adroitness of his arguments, which the world knows, and if necessary by means of fraud. The leadership of the German press policy—let us consider only this narrow sphere—was and remained in the hands of Dr. Goebbels and Dr. Dietrich. The same thing happened with the radio as the witness von Schirmeister has stated, when Fritzsche took over its direction in November 1942. Dr. Goebbels, one of the oldest and closest of Hitler's collaborators, and Dr. Dietrich, Hitler's permanent escort—during the war he was present almost uninterruptedly in his headquarters—never allowed the leadership of the press and radio to be taken out of their hands, especially by a man, who like Fritzsche, had no connections of any kind to Hitler, and had not even had a single conference with him. Ultimately, Hitler's will was decisive here, too.

We have furthermore heard, what influence—it is of no importance here whether it was due to Hitler, Goebbels, or Dietrich—other governmental agencies too successfully exercised on the press and radio. Here, I will mention the Foreign Office, the High Command of the Wehrmacht, and other ministries, the heads of which were much more closely connected with the three aforementioned personages than for instance Fritzsche.

In order to avoid a misunderstanding I would like to point out that the assertion of the indictment that Fritzsche was closely connected with the party propaganda apparatus, e.g., with the so-called Reich Press Agency of the NSDAP has been expressively withdrawn by the Prosecution in the course of the trial. With this, I think that I have sufficiently established the limits of the defendant's responsibility. This definition shows the inaccuracy of the widely spread opinion that Fritzsche occupied a very important and influential position in the "gigantic propaganda apparatus" of the Third Reich. This limitation not only takes into account the legal but also the moral facts which have been clearly exposed by the production of evidence. Thus to a certain extent I have already taken stand against the reproach that Fritzsche was a member of the alleged conspiracy. The Prosecution has repeatedly tried to incorporate Fritzsche's work, at its different stages, in the alleged group of conspirators and has drawn from it conclusions which go so far as to say that Fritzsche was also responsible for war crimes, for crimes against humanity, and even for crimes against peace. Already in the arguments of the indictment these attempts seemed to have little relevant justification. It is certainly no improper criticism, if I declare here, that it caused the Prosecution a certain embarrassment to display Fritzsche's subordinate position as an official as so important and full of meaning. Today, now that the hearing of evidence is complete, it seems to me, that the attempts to include Fritzsche in the circle of conspirators has miscarried. Fritzsche cannot be found at any of the sessions at which Hitler discussed any plans or actions with the closer or wider circle of his collaborators. And apart from this, he never actually took part either in any discussions which might have been capable of plunging the world into a blood bath of wars of aggression. He was neither an "old party fighter" nor was he "decorated" later on with the golden party badge. He did not belong, as I had to emphasize especially, to any of the organizations which are to be declared here as criminal. Up to the end he fulfilled the functions of an official in a ministry and received directives like any other official. He could never be a political advisor.

In view of the circumstances the bridge between him and the alleged conspiracy could have been spanned only by the person of Dr. Goebbels. The witness von Schirmeister has repudiated such an assumption. According to his testimony, Fritzsche did not even belong to the closer circle around Dr. Goebbels. Indeed, von Schirmeister could even state that Fritzsche often had to apply to him, because he could not get Dr. Goebbels' opinion on any question other than through him, as he was Dr. Goebbels' personal press assistant. The relations through the state secretaries—e.g., Dr. Dietrich, Dr. Naumann, to mention only a few—also involved certain difficulties. That is not the method by which conspirators usually communicate.

Moreover, the witness von Schirmeister has said that it was out of question that Fritzsche could ever have embarked on an exchange of ideas with Dr. Goebbels with a view to forming plans. Now, it would have been the task of the Prosecution to prove to the defendant Fritzsche, where his participation in the conspiracy can be seen. I say that one cannot consider any count of the indictment as proved.

I think that it was not Fritzsche's official positions at all which led to the bringing of an indictment against him. I rather assume that the latter is solely to be traced back to his broadcast speeches, which made him and his name known—but only during the war—both in Germany and perhaps also in a part of the rest of the world. All the serious charges levelled against him lead back therefore only to these addresses. The other assertions concerning his position within the state or party apparatus are only based on assumptions or combinations without any factual basis, as appears for example especially clearly from the purely personal and refuted judgments of Schoerner, Foss, and Strahel. But his name has only become so well known, because of the technical means he utilized. Only the great significance of the radio for the modern transmission of news made him appear in a special light. But because of this, it shall not be argued that he thus had a great influence on the German people. Out of our own experiences of Nazi-ruled Germany, I can well say, that every Gau orator, many a district leader (Kreisleiter) used a much more far-reaching language. But, as a rule, the speeches of the latter were only published by the local press.

With respect to these addresses, the defense was handicapped so far as they could not be made available with their entire wording. Unfortunately, the excerpts quoted during the cross-examination by the Russian prosecution could not be complemented either by the entire text of the respective speech. Thus, all possibility disappeared of reproducing the sense the respective address had at the time it was delivered. Later on, I will come back to this and give an example of it. The method of submitting only individual passages or quotations to the Tribunal is here especially inadequate because it is impossible to see from it, that in his speeches Fritzsche always put the events of the day in the foreground. It was only rarely and incidental that he drew any general ideological conclusions. But already from what Fritzsche has stated with regard to those of his discourses, which the Prosecution was able to produce in their entire text, there results a completely different picture as to the cause and motives of his broadcast speeches. From 1932—thus already before the seizure of power by National-Socialism—up to 1939 the latter were nothing but a political press review. And that is what they were called! Accordingly, they were a collection of quotations from domestic and foreign newspapers.

Fritzsche does not dispute the fact that these collections aimed at promoting the interests of the National-Socialist state. Only during the war—but right till the end still based on quotations even from the foreign press—these speeches became the platform for the polemical controversy which during the war was carried on on both sides. Without any doubt they did greatly contribute toward the formation of political opinion in Germany, but there is also no doubt that many people in Germany listened to Fritzsche's speeches not for their polemics but in order to learn from his quotations something about the opinions expressed abroad. For years these speeches were chiefly private work carried out alongside his official position. Only during the war they came to be considered as semi-official because of their increasing political news value. Thus they assumed—in order to make it clearer—approximately the character of editorials of a newspaper, which—as one used to say—stands close to the government. It would have been easy for the defense to submit to the Tribunal tomes of newspapers dating from the same time, the editorials of which showed the same trend, and even, as it can be asserted here with all force, used quite a bit more violent language.

Fritzsche could most definitely—and in my opinion quite rightfully—repudiate the fact that these addresses constituted an incitement to race hatred, to murder or violence, to hatred among nations or to wars of aggression. If such an effect could really have been produced by these speeches, absolutely the same reproach should fall upon any editor of the Third Reich, who received the "slogans of the day" from the Reich press chief. The accusation seems to be levelled against Fritzsche before this Tribunal only because through a technical means he could be heard at a wide range. But it is due to the war—and only since 1939 did his speeches gain a political news value at all—and in the nature of the thing, that the polemist becomes himself the subject of polemics. Especially the one whose influence, considered from the standpoint of political news value, extended farther technically than the influence of an article in a local paper. Only in this manner his name became better known to outsiders than names of people who were much more powerful than the publicist.

How far the Prosecution went in its accusations against

Fritzsche in his capacity of a publicist is shown by the fact that not only is he supposed to have belonged to the plotting group of conspirators, but that he is also accused of crimes against peace. If a propagandist is subjected to such an accusation, there arises immediately the question of whether public radio speeches would not be the least proper means for carrying through criminal aims of a secret conspiracy. Speeches, which can be heard all over the world, could at the best be suited for camouflaging such aims and for misleading the world. But actually, just the opposite reproach is levelled against Fritzsche. He is supposed to have incited other people.

Thus one may consider that the nature and character of these speeches is sufficiently characterized. Their importance had to be brought in proper relationship to the far reaching conclusion of the Prosecution.

Before going into the details of the accusation which states that Fritzsche by radio speeches or by other means contributed toward the various wars of aggression, it is necessary in a case where accusations to that effect, pertaining to criminal and international law, are raised against a publicist to deal with a legal problem.

At no point—as far as I can see—did the Prosecution consider the question of whether and to what extent propaganda, i.e., the attempt to influence minds, especially during war is subjected to the rules of international law. Perhaps this problem did not come up for discussion because this question, once it is asked, would have had to be definitely denied. However, while the indictment speaks of the "gigantic propaganda apparatus" during Hitler's dictatorship, which was created as a consequence of the supervision and control of any cultural activity, it does not draw from it any conclusions for a judgment according to international law. For, as a matter of fact no generally or specially valid rules concerning this field have ever been established; also no sort of common law could develop here. In this connection it is interesting that in the textbooks of international law, no attention is paid at all—as far as I could find out—to this problem. Nevertheless, a certain number of textbooks, especially those with a tint of natural law, contain regularly in their catalogs of fundamental international law also a section concerning national honor or national dignity. From the equality of nations and their living together in a community governed by international law the requirement is deduced in these chapters that they have to treat each other with respect. Accordingly it is furthermore requested that insults directed by private persons from their own sphere of influence against other countries be prevented, and such excesses be punished when committed. But this idea found its positive legal expression only in a series of national criminal codes which subject to punishment — naturally in peace times only — the insulting of foreign chiefs of state for instance. Another doctrine which is based less upon natural law holds that it is not a question of legal obligation but one of international courtesy only. Be it as it is, and in some form precisely defined international law does not exist, not even for peace times. Especially not as far as private propaganda through press and literature is concerned. And now: As to war, any directive covering this point is lacking, as already mentioned. According to the prevailing international law there is no limit to propaganda against foreign countries in war. Accordingly there is only one limit to this propaganda, namely the great limit which governs all the rules of warfare, that everything is permitted and only that quod ad finem belli necessarium est.

In view of the tremendous importance of moral influence upon the will of individuals and nations, it is beyond doubt that propaganda can be an important and in certain cases even decisive means of war. Of no lesser importance than for instance economic warfare or even the fight with weapons. Propaganda has here a double task: First, to serve as a means for increasing the power of resistance of the own nation and secondly to undermine the fighting powers of the opponent. This influence—rosy coloring on one side, slandering on the other, concealment of fact, etc.—is in its character nothing else than a stratagem which, within the framework of the rules of land warfare, has been expressly declared as permissible instrument of warfare according to article 24 of the Hague rules of land warfare. In order to continue this line of thought, it may be pointed out that spying—also a form of war stratagem—has equally been declared as permissible instrument of warfare by the Hague rules of land warfare.

What has been said here is in complete accordance with what is practiced by the countries; defamation of the opponent and its statesmen, making him contemptible, falsifying the motives and intentions of the enemy, defamatory presentation, assertion of unproved statements, all this belongs unfortunately to those means of propaganda which are used on all sides and at an increasing rate during a war.

Small attempts but only for the purpose of preventing war are known from the time before the first world war. At that time they pursued an even further reaching aim, namely to contribute in general to the understanding among nations by means of a general moral and spiritual disarmament. (Desarmement moral.)

However this goal was not reached before the first world catastrophe of this country.

After 1918 though, as a reaction after the great armed conflicts, it received a stronger impulse and became known to the world through the tasks imposed upon the League of Nations in this respect. This was indeed the first real attempt to start an intellectual disarmament. At the 5th session of the League of Nations in 1925 in Paris it was decided to found an institute for intellectual cooperation (cooperation intellectuelle). Further investigations which lasted for years resulted in numerous propositions, in the establishment of general committees and subcommittees of experts, with an incalculable wealth of documents. But nevertheless none of these great efforts led the idealistic impulse and the longing of the nations for a "moral disarmament" and for intellectual cooperation to a sober and concrete legislation which would have imposed legal obligations on the individual states as well as on their nationals. No results were achieved in advising a way in which to prevent during war, hatred, incitement, distortion of facts, and provocation of other nations or of the nationals of other countries in all the possible modern forms of expression. Even such well-defined and comprehensive propositions for a moral intellectual disarmament as those presented by the Polish Government to the League of Nations in two memoranda of 17 September 1931 and 13 February 1932 had the same fate. These propositions aimed at using national legislation to prohibit any propaganda, so far as it might become dangerous for peace, and even any propaganda which aimed at a mere disturbance of the good relations between nations. Influence was to be exerted not only upon the big public news media but also upon the vast ramifications in the administration of any modern state including even the revision of schoolbooks. These propositions which advised member states not to recoil even from censorship and measures of prohibition finally failed because of the paradox existing at that time: These propositions were confronted with the deeply-rooted conception that liberty of expression of opinion in moral matters could not be touched by means of such exceptionally far-reaching police measures; this freedom of expression was to be preserved as an "unalienable right" granted by the Creator. And the matter stopped there with this opposition of fundamental principles: We have had here in the courtroom a special demonstration of what censorship and control of the press, radio, and films could lead to.

The few bilateral agreements which were concluded after the failure of the Polish propositions of 1931 and 1932 are not worth mentioning here. They restricted themselves solely to certain sectors of propaganda methods, and only for the duration of good-neighbor relations.

Therefore we can only express the hope that on the basis of international solidarity it will be possible in the future to unite these still contrary theses on a higher level.

In this trial a secret order was produced which had been issued by the High Command of the Wehrmacht on 1 October 1938. The latter in its section for international law had a chart drawn up for the case of an armed conflict. On this chart one was to look up the principles for meeting any possible violation of the rules of warfare by friend and foe. Knowing the legal vacuum in the field of propaganda in its broadest sense it is stated there that from the point of view of international law it is absolutely permissible to render the opponent contemptible and to try to undermine his strength "regardless of how many lies and falsehoods are used for this purpose" and that even from the legal standpoint a rule could be established for the future to the effect that in case the enemy should employ such propaganda, defense by means of "counter attacks" is legally possible, whereby "naturally the propagation of atrocity lies" must be used. This may sound cynical and brutal. But unfortunately it fitted in with the customs of war, or rather: This undisguised statement originated in the actual legal lacunae existing in international agreements and in common law. Dr. Kranzbuehler rightfully stated here: In war there is no duty to tell the truth.

Due to the period of time elapsed since the first world war and its propaganda methods on both sides we are permitted to-day to consider the happenings of these days as belonging to history. At that time, too, all belligerents reached the point where they tried to undermine the opponent through the means of propaganda. The legend of children's hands cut off by German soldiers —a war lie, as Arthur Pensenby proved in his book "Falsehood in War-Time" showed up in a French schoolbook even in the midst of peace, namely 10 years after the first world war. Publications of all belligerent countries, drawings and cartoons, dating from the time of the first world war can be found in abundance in all libraries. Many still remember to-day the film which showed terrible atrocities and was named: "The Knights of the Apocalypse." A motion picture which circulated almost throughout the entire world at the time of the first world war. And unfortunately the matter remained legally unsettled until to-day. Is it possible to include retroactively the case of the defendant Fritzsche, in his capacity of publicist in the Nazi state, into a new international law, the creation of which is also one of the goals striven for by Mr. Justice Jackson in this Trial? Can the desire of the Prosecution to see Fritzsche punished as a war criminal be based upon the assertion of a logical development of existing laws when up to now, nothing, but absolutely nothing has been regulated juridically and legally in the field of propaganda and no fertile beginnings of any kind appeared in this direction? The question here is certainly not that of an only apparent legal loophole.

What has been said does, of course, not include those cases in which individual crimes were actually incited by means of propaganda. Therefore, I shall now go into the individual accusations of the Prosecution in order to show that Fritzsche is not guilty of having committed such acts.

As far as the alleged crimes against peace are concerned, the Prosecution starts from the point that any important political and military attack on the part of the German state leadership was preceded by a press campaign. Therefore, the Nazi conspirators for that reason would have had used the press also as an instrument of foreign policy and as a feint to cover subsequent aggressive actions. From that general, perhaps even correct description of such intentions, the far-reaching conclusion is drawn that Fritzsche may also be co-responsible for those matters. Such responsibility would be based only on the time factor that he was in December 1938 to the spring of 1942 the leader of the "German Press division" within the official Ministry of Propaganda. But such inference lacks foundation. It could have been justified only if a proof had been found that Fritzsche really was the creator and inspirer of all those press campaigns. But Fritzsche, if only due to his subordinate position, subordinate not only in regard to the departmental organization but also in relation to the real leaders of propaganda—Hitler, Goebbels, Dietrich, and others—could have known only what his superior presented to him, as to other employees, as historical truth. I am reminded of the fact, that all witnesses, whenever testifying to influence of the foreign policy of the press, always pointed out, that before any political and especially before military actions, the Foreign Office justified the measures taken in the field of high politics before the public by the issue of White Books. Just as in the case of other intentions or goals of the highest leaders of the Third Reich, the press was informed also in these instances only what the public was permitted to learn, while matters not destined for publication were kept secret.

After hearing the evidence, what indeed was the relation between the propaganda furnished by Fritzsche and the various military invasions? What could he have known of their background?

On the occasion of the occupation of Bohemia and Moravia instructions by the chief of the Reich press were given to him only a short time before the decisive step of 15 March 1939. They consisted as in all other cases in so-called "Daily Directives" given out at press conferences. Such daily directives found their expression in the headlines of German papers. It may be mentioned here, that the best known organ of the party, namely the "Voelkischer Beobachter" due to indirect connection with the chief of the Reich press—and, during the war, with the headquarters of the Fuehrer—has been more independent of such slogans of the day since it had a foreign news service of its own. What was printed in the "Voelkische Beobachter" does, therefore, not represent what had been approved by Fritzsche as leader of the German press. Fritzsche had already—and that attitude is of great importance in regard to all his activities—established the principle for his press information that untrue news should never be given to the press. The apparent reason for that was the fact that his predecessor in the "German Press" division, Berndt, had all kinds of news spread during the Sudeten crisis, losing thereby the confidence of the leading German writers. Fritzsche on the witness stand as well as the witness von Schirmeister gave details about these matters.

It is not apparent in what respect Fritzsche played a greater part than any other officials or officers when the German troops marched into Czechoslovakia. Whatever has been disclosed in this trial about Hitler's hidden intentions of those days was as little known to Fritzsche as the plan "Fall Gruen" could have been known to him. As head of the inland press, he could not have had any influence on the propaganda possibilities which were to be made use of within Czechoslovakia proper.

The same is true of the Polish campaign: Here, too, Fritzsche did in no way express himself for any armed conflict or spread purposely some information which might have supported any bellicose intentions. In his very radio broadcast of 29 August 1939, which was held against him during his cross-examination, he points out explicitly that there could not in fact exist any serious doubt about the German will for peace. Those and many other lines are particularly significant in proving Fritzsche's good faith. He gave expression to his and the German nation's disappointment that Hitler's repeated emphasis on his will for peace had proved to be a lie, even a fraud. If one examines in their full meaning the other broadcasts by Fritzsche shortly before and during the Polish campaign none of his statements could be interpreted as favoring that war of aggression. The official reasons given at that time convinced Fritzsche as well as millions of other Germans that Right was on their side. That Fritzsche had been sharing such conviction in times is proved by his admission, declared on the witness stand, that he also feels to have been deceived by Hitler.

It was no different in the case of Yugoslavia. Here likewise Fritzsche was able to learn only whatever facts were given to him and to other leading journalists by the chief of the Reich Press, which Fritzsche had no opportunity to verify if only for the speed at which those events were developing, if even the thought struck him at all that the press was utilized to provoke warlike measures.

The role of the press in the surprising attack on the Soviet Union was made particularly clear in this trial: Already for strategical reasons the total propaganda apparatus thus including Fritzsche as head of the Inland Press division had to be left in the dark. It was just that campaign, which Goebbels cleverly kept secret by simulating an intended German invasion of England. Goebbels consciously directed even his closest collaborators on that wrong track, as was stated here by the witness von Schirmeister.

Fritzsche's statement that he did not know anything about secret preparations through the formation of a so-called Eastern Ministry was not refuted by the so-called Rosenberg report which was read to him during the cross-examination (Rosenberg's undated draft of a report, *Doc. 1039–PS*). This is a document which due to the many names it contains, was used also in other connections. At the same time it is the only document, which includes the name of Fritzsche in connection with some secret plans. From that document, which was drafted by Rosenberg and some of his associates according to established facts some time around the 28th or 29th of June 1941—thus after the start of the campaign—no conclusion can be drawn that Rosenberg spoke with the defendant Fritzsche before the decisive date. The draft does not bear any date or signature. Besides, Fritzsche is mentioned in it by the title of "Ministerial Director" which he was given only in the fall of 1942. Fritzsche's statement on the witness stand has in no way been disproved namely that he never had been informed by Rosenberg either about an approaching war with the Soviet Union or about an intended formation of a Ministry for the East. Only after the beginning of that campaign and after the official announcement that a new ministry had been established the requests of Rosenberg were transmitted to him by his associates with regard to the presentation of Eastern problems in the German press.

Thus Fritzsche's deposition still holds that in the case of the war against the Soviet Union, as well as in other instances, he had been informed only at the moment when he was given the pertinent news for publication. That would not imply, as should be admitted, that he played the role of a somehow scheming or at least informed conspirator. And it cannot be assumed that Fritzsche knew anything about the plans of the High Command of the Wehrmacht in June 1941, or even of the Bormann Protocol of 16 July 1941, both of which were read to him during his cross-examination. Those negotiations show that they could only have taken place in the innermost circle. In this respect the hearing of evidence, which did not concern Fritzsche directly, has shown that even military means of deception had been used to camouflage the plans. This has been stated by the witness Paulus and from the report of the German Military Intelligence Service. The nature of all these things was such that they could well be withheld from a newspaper man. Even the witness Gisevius, who was always engaged in finding out secret ends, had to admit what efforts were required even within the High Command of the Wehrmacht to obtain information as to whether Hitler was planning a war or not.

In conclusion I want to state, therefore, that the emphatic assertion of the Prosecution that Fritzsche was the accomplice of Goebbels in assisting him to hurl the world into a blood bath of wars of aggression is not justified. When I cross-examined Fritzsche he, on the other hand, pointed out: Whatever the facts may have been in the various instances, he and the German public at every moment from the advance into Austria to the invasion of Russia were given only such information as made the necessity of the German actions seem justified.

Now one could also conceive the charge of a crime against peace to be that Fritzsche constantly called on the German people to hold out during the carrying-out of a war of aggression. Naturally, he did not make any defeatist propaganda in the course of his radio speeches.

I must, therefore, discuss the question whether this or any sort of participation in a war of aggression, after the latter broke out, could be considered as participation in the crime against peace and could be punished accordingly.

The French Chief Prosecutor M. de Menthon tried to draw the conclusion—proceeding from a literal interpretation of article 6, paragraph 2a of the Charter, without regard for the real meaning of this article—that the soldiers and other representatives of the aggressor state could not undertake any military operations at all which could be justified by international law. He had to recognize openly, however, that in practice this idea must lead to impossible consequences. Thus, for example, he recognized the Hague Convention for the Rules of Land Warfare as a law which not only obligates aggressor and attacked alike, but also justifies them. He thereby let it be clearly recognized by implication that according to his idea this prescription of the Charter is to be interpreted restrictively.

In Article 6, paragraph 2a of the Charter the following are defined as crimes against peace: The plan, the preparation, the introduction, and, according to the German translation, the "carrying-out" of a war of aggression. "Execution" is the translation of the English word "waging." It could be translated more correctly by "undertaking." Undertaking now means in its natural sense about the same as "intend," whoever undertakes, pursues, intends something, has not executed it yet. The word "execute" could create the opinion that the crime against peace was not concluded with the outbreak of war and therefore could continue for the whole duration. The result of this conception would be that all the persons, who participated in the war operations, as for instance, the Army leaders, all members of the Armed Forces and beyond that all the persons who supported the war in any way—even by deliveries of war material and through broadcasted speeches—were to be punished according to this decision. They had at least contributed support to the waging of war. These persons could even then be criminals against the peace, if before the war they had in no way participated in the planning or preparation of it. Yes, even if they had no idea that an aggression was involved.

To counter this the following must be stated: Only those can be considered as the executors of a war of aggression who had planned it themselves. They just execute their common plan by starting the war, with or without a declaration of war. Thus "execution" ranges on the same level as beginning. The accusation of crime against peace can reach only those who also planned it.

This is supported by the following reasons:

Normally, penal law intends to protect the peace against wars of aggression, i.e., against unlawful wars. In the moment that such unlawful wars start—are "unleashed"—as the Indictment puts it—the rightful domain of peace has been violated, the crime against peace is consummated and accomplished. Therefore, no other meaning but "bring about" "proceed to execute the plan" can be attributed to the term "carry through," or "undertake," waging.

This interpretation is also consonant with the historic development of the concept of "crime against the peace" international law. For many years, international law has made a distinction between "war crime," in the narrower sense, and "war guilt," in the wider sense. War crimes are offenses against established rules of the law governing warfare, established by agreement or force of custom; against war practices and, going further, also offenses against humanity. War guilt means being guilty of having brought about war, in particular an unlawful war of aggression.

This distinction found expression also during negotiations on the peace treaty after the first World War. A deposition of this is found in Article 227 ff of the Treaty of Versailles. There can be no doubt that the concept of crime against the peace in the meaning of the Charter is to be identical with this war guilt in the previous meaning of international law.

Paragraph 6 part 2a has to deal with the war criminals, that is to say those who bring about an illegal war.

The opinion that the further support of a criminally instigated war was likewise a crime against peace must lead to entirely untenable consequences. Thus hardly any citizen of a country, which had started a war of aggression would be guiltless. The war in its present form is, unlike any previous ones, no longer limited to fighting between the armies. It extended—as has been shown in both these World Wars—over all the belligerent nations and over all their vital interests. It grew into a total war. Total in this sense, that everybody takes part in it. The woman, who is making screws in the factory, is cooperating equally in this total war. And, as Professor Exner so vividly explained in his final pleading, in this war of aggression every arrestation would mean a deprivation of liberty, each requisition a robbery, and each shot a murder. It really would be absurd were all members of a nation to be made responsible as authors of crimes against the peace.

A classification as to the grade and kind of the contribution toward the war would moreover be practically impossible.

Crimes against peace therefore can only be committed by those who were collaborating in breaking the peace, whilst the bulk of the people, who had not participated in it, could not be counted in this category.

The point of view which has been developed here is, in my opinion, also represented in the Indictment. The latter considers the crime of breaking the peace realized by the "unleashing" (Entfesselung). In no place has it even been hinted that the crime itself or its continuation is seen in participation in war or in its support by production or supply of any kind. Also, according to the drawing up of the indictment from the period of time from the beginning of war onward, only crimes of the second and third group come into question, also war crimes in the more closely defined sense of international law, and crimes against humanity.

In my opinion Justice Jackson, in his opening speech of 21 November 1945 also took the point of view which has been advanced here, whereupon it was pointed out to him in the Session of 1 March 1946: Justice Biddle called his attention to the fact, that at that time he had indicated that the beginning of war was the character of the crime and NOT the engagement in war itself, i.e., in other words, that with the beginning of the war of aggression the crime against peace within the meaning of article 6, paragraph 2a of the Charter was completed (breach of peace).

From these statements it is to be concluded that any activity during the war which furthers the war cannot represent a criminal act, neither can the radio broadcasts of Fritzsche, which he made during the war.

The next group of accusations levelled against the defendant is for instance characterized by such terms as: incitement against Jews, incitement against foreign nations, incitement to exploit occupied territories, propaganda for the "master race."

On the witness stand Fritzsche made a declaration which represents a summary of the knowledge he gained after the collapse and above all here in the court. It ran as follows: An ideology in whose name five million people were murdered must not be permitted to survive this event. Now how far did Fritzsche make propaganda for this anti-Semitism? Was he able thereby to foresee this murder, did he approve of it or at least tolerate it? The Prosecution went very far in its assertions: It maintained that Streicher as "the chief Jew-baiter of all times" could hardly have surpassed Fritzsche in his defamation of Jews. Fritzsche defended himself against this accusation. And rightfully in my opinion. We see this quite clearly when we compare the slogans from the arsenal of anti-Semitism, which Sir Griffith-Jones read for hours in excerpts from the "Stuermer" at the session of 10 January 1946, with Fritzsche's statements submitted here by the Prosecution. Fritzsche—supported by the affidavit of Scharping dated 17 May 1946—was able to point out what he undertook against this paper. It must also be noted here that the language and arguments of the "Stuermer" found no echo in any German newspaper or at a single broadcasting station of the National-Socialist regime.

Before the war Fritzsche carried on no anti-Semitic propaganda of any kind. All the statements submitted by the Prosecution originated during the war. They are, however, not directed against the Jews as a people or as a race, but are related only to the question of the origin of the war. They only mention occasional polemical introduction of the Jewish question in the propaganda battle which was fought in this war alongside the battle of arms. This explains the fact that the radio addresses submitted by the prosecution never contain more than casual remarks and never speak of the Jews by themselves. Each of his radio speeches may be examined to this effect. Nor does there exist a speech by him which would have dealt exclusively with the so-called "Jewish problem." He never talked on such a subject. Fritzsche always spoke simultaneously of "Plutocrats," "Bolshevists," "Democrats," and used other such phrases by means of which the propaganda of the Third Reich felt obliged to conduct its battle. During his cross-examination as witness he dealt in detail with each of the radio addresses submitted in the trial and discussed the reason he had each time for making merely incidental remarks on this subject. An examination of all his statements over the radio would show that of all the fundamental propaganda subjects of Nazi-ideology Fritzsche mentioned and advocated anti-Semitism least of all.

This takes all foundation from the conclusions of the Prosecution. For there cannot be any connection between such rare statements on the part of Fritzsche and the murder order given by Hitler. I therefore expressly protest against the accusation that Fritzsche be more guilty than those credulous men who carried out the shootings. In the course of this trial we have heard many testimonies as to what secret and ultra-secret means and methods were used by the really guilty ones to carry out this horrible murder. So many testimonies cannot be put aside as irrelevant and unreliable. Contrary to former assumptions this trial should have made it clear that there existed only a small group of instigators and initiates. It has not been proved in the least that a man like Fritzsche belonged to this closest circle of Hitler's despotism. The trial has even shown that he made the acquaintance of the majority of his co-defendants here in the dock only.

To draw such far-reaching conclusions against Fritzsche would necessarily lead to the assumption that everybody who took a public stand for anti-Semitism as such, if only with reservations, bore the same criminal guilt. The extent of moral guilt is much greater. It concerns us, however, only so far as the moral guilt is identical with the criminal guilt. And therefore there is no need to discuss here how far a mere error—even a political one—may at the same time become immoral. The accusation, however, of being co-responsible for these murders, was an especially deep blow to Fritzsche.

With regard to this it might be objected that although Fritzsche did not stand very closely to his chief Goebbels and to the other heads of the information control, he was yet one of those persons who had access to the foreign press and radio news. This is perhaps the reason why Fritzsche is accused of having had knowledge of almost everything that happened during Hitler's rule. Fritzsche was able to state in the witness stand and to quote too, a number of details, on the point that even with this opportunity his faith was not shaken in the questions which were decisive—perhaps also morally. This no more enabled him to realize actual happenings than his profession of journalist which gave him the opportunity to follow up rumors which were appearing, for himself. He could not break down by such means the wall which had been erected in front of the misdeeds. With regard to foreign reports on atrocities and other misdeeds Fritzsche as well as von Schirmeister and especially Dr. Scharping have stated that the examination by the office "Schnelldienst" (express news service) which was carried out in all cases, resulted time and again in official replies which eliminated doubts as to the inaccuracy of such statements from abroad. This office, the "Deutscher Schnelldienst" (German express news service)—which had an entirely different significance from that claimed by the Prosecution—was a control agency created especially by Fritzsche in order to have foreign news tested as to the truth of its contents through inquiry at the competent German official agencies. If the defense had succeeded in submitting the records of this "Schnelldienst" to the Tribunal, documentary evidence could have been offered in every detail for the way in which German authorities answered inquiries of this kind.

For instance the RSHA knew in a masterly way how to make its replies sound credible. The foreign propaganda which had to serve a definite purpose could on the contrary lay no claim to any great power of persuasion. This all the more since enemy propaganda in war time also brought of course positively incorrect reports, of which fact Fritzsche was often able to convince himself.

Furthermore Fritzsche has been accused of advocating the doctrine of the "Master Race."

The only statement by Fritzsche himself which the Prosecution submitted in regard to this point shows clearly that Fritzsche neither championed nor promoted such an idea, on the contrary, expressly rejected it. An examination of the quotation presented by the Prosecution does not leave any doubt about it. Beyond that the hearing of evidence (the witness von Schirmeister and the affidavit of Dr. Scharping) has shown that Fritzsche prohibited the use of the word "master race (Herrenrasse)" for press and radio altogether. Fritzsche himself under oath termed this assertion nonsensical. Therefore, after thorough examination of all obtainable speeches by Fritzsche I can only state that this charge is untrue. Nothing is changed in regard to this statement by the fact that Foss and Stahel judged differently without giving any concrete facts. I already dealt with the value of these documents as evidence.

Fritzsche allegedly stirred up hatred against foreign peoples. To prove this serious charge the Prosecution emphasized several excerpts from two of Fritzsche's radio addresses which were held on 5th and 10th July 1941. In order to be able to understand correctly the circumstances surrounding the speeches, one must take into consideration the dates on which they were held. They were made shortly after the attack on the Soviet Union. He is not charged with any further statements—made for instance at a later time or similar ones which might have shown some kind of system. When the passages cited by the Prosecution were supplemented by the full text of the speeches and by the examination of Fritzsche on the witness stand it was shown that Fritzsche did not slander the Soviet Union in them. Neither could what had led up to these speeches have given him any reason to stir up hatred against that country. They were held shortly after German sources and in particular war correspondents had reported atrocities in towns in Galicia which had been conquered by German troops. These were things which were reported everywhere in Germany—but also by foreign correspondents—in print, pictures, and motion pictures. In this respect there was an especially great volume of material and in his speeches Fritzsche expressly referred to it. Fritzsche's statements reflect the agitation of the German public over these reports and he pointed to those presumed to be guilty of the atrocities.

The facts as such were also confirmed by the Russians. The latter added, however, that not the Russians but the Germans were guilty of these actions. What happened was only that on the basis of undeniable facts a controversy had flared up as to the responsibility—just as happened later in the famous case of Katyn—in which both sides morally condemned the instigators.

In neither of those speeches, as an examination of their entire contents would reveal, Fritzsche designated entire nations as inferior or sub-human. Phrases about "Sub-humanity" referred only to those culprits whom in real indignation he pilloried as morally contemptible. He could believe the proofs presented by the Germans and therefore there is no reason to assume that at the time he held the speeches he could have predicted what actually happened in the East much later. Therefore there could not have existed any intention on his part to stir up his audience to engage in similar actions. It is impossible to establish any causative connection on the basis of two such words he had spoken once. The same is true of the excerpts from a speech of 29 August 1939, which General Rudenko read to him during his cross-examination. That broadcast also refers to atrocities committed shortly before the outbreak of the war in Bromberg and concerning which on the day of the speech—that being the reason for it—an official White Book had been published. The results of an investigation of those atrocities were summarized in it. Only the guilty ones were designated by Fritzsche as inferior human beings. But it is not justifiable to generalize this opinion to such an extent as though he had designated the entire Polish nation as inferior. Fritzsche considered the representation in the official White Book as correct. He could not have doubted the fact that Poles had killed Germans. However, no word in that speech allows for the conclusion to be drawn that he took the opportunity or even suggested that the Slavic nations be exterminated. The German people no more than Fritzsche could imagine anything like it at that time.

General Rudenko attempted in his cross-examination to prove that my client had made false statements. For that purpose an excerpt from his broadcast of 2 May 1940 was presented to him. In it Fritzsche gives a description of the towns, villages, and hamlets which he had visited shortly before, and which had remained undamaged by war. The Russian prosecutor pointed to the official report of the Norwegian government enumerating the damages caused by the war. Thus the impression was created that Fritzsche was lying to his audience. The full contents of that speech shows, however, that the quoted sentences regarding undamaged houses in Norway stand directly next to other sentences in which Fritzsche himself depicts the destruction caused by the fighting in Norway. The statement does not contain a lie if Fritzsche has reported in it that in other parts of the country he visited not the slightest trace of fighting was found. His description, therefore, is not in contradiction at all to the Norwegian Government report.

At this place, I should like to insert a few remarks about the case of the "Athenia" and the part that Fritzsche played in this connection. This case shows to what extent Fritzsche was at pains not to retransmit reports until they were proved to be true and reliable. But it shows also how dependent Fritzsche was on the version of the official German offices. This supports his good faith, for the principle that official announcements are to be believed with absolute faith and which was naturally the reason for his conviction could not at that time be shaken.

That particular article in the "Voelkischer Beobachter" dated 23 October 1939 has been rightly described in this trial by all parties as contemptible. Now, Fritzsche also engaged in polemics on this point in sharp if not similar terms. I take the liberty of pointing out that such remarks could be morally condemned only if Fritzsche had known beforehand that it was actually a German submarine which sank the "Athenia." But as he has testified under oath, this fact first became known to Fritzsche here in Nurnberg in December 1945. Before that, he was precisely the person from whom this decisive circumstance was withheld, although he had, through the naval liaison officer, undertaken investigations at the Naval Supreme Headquarters and other official headquarters concerning statements by foreign reports. To support the charge that Fritzsche instigated the ruthless pillage of the occupied territories, the only evidence submitted is a statement made on the 9 October 1941. In this, a passage from a public speech made by Hitler a few days before is reproduced. I have been at great pains to find an instigation to ruthless pillage of occupied territories in this quotation as well as in the remarks made by Fritzsche about it in his radio address. It is inexplicable to me how any sentence can possibly convey anything to this effect. I can only assume that it is a case of a misunderstanding and leave it for the Tribunal to judge.

In no other connection has Fritzsche spoken a word or given a hint to this effect and, least of all, openly called for such a thing. Moreover, it is to be gathered from Dr. Scharping's affidavit dated 17 May 1946 that the use of any kind of coercive means against other nations would have run counter to the purpose of his whole work, including his work within the Propaganda Ministry, namely to gain the voluntary cooperation of the European populations. It has also not been proved that Fritzsche knew really more about the manner in which foreign workers were actually recruited. I would point out that the defendant Sauckel stated he had only one brief and unofficial talk with Fritzsche and that in the beginning of 1945. In his Affidavit Fritzsche gave further the exhaustive details also on the fact that he obtained extensive material from the competent authorities for notification to the German public, in which the free will basis upon which men were being recruited for employment in Germany was continually pointed out. It is inadmissible that information concerning this was given to the Ministry of Propaganda other than that given by Sauckel in his report to Hitler.

Moreover nothing has proved that Fritzsche approved or used for propaganda purposes the violations of international law, already committed or intended, such as the so-called Commissioner's Decree, or the Lynch Law against enemy aviators, who had been brought down. As regards the Commissioner's Decree, the Russian Prosecution charged the defendant that as a soldier, as a member of the 6th Army, he took cognizance of this decree. This has been confirmed by Fritzsche. He could, however, point out that his attitude had not only been passive. He even, as will have to be confirmed, took a successful stand against this by way of proposals to his Commander-in-Chief, witness Paulus. General Rudenko's charge, that in spite of this he remained in Hitler's service, although he should at least have assumed that Hitler was the author of such an order contrary to international law, is not a reason for accusing Fritzsche as a propagandist or even morally as a man. My Lord Justices! If such an accusation with a criminal legal foundation could be made, it would rest upon every German soldier who fought on for his Fatherland in the East after the autumn of 1942.

Fritzsche also protested against the fact that Allied fliers were treated contrary to International Law. When he learned this, he spontaneously refused any propagandist activity for Goebbels in this sphere. These facts have been ascertained through his thorough examination on this subject and through Dr. Scharping's Affidavit.

Furthermore, no charges can be made from what he said about the use of new weapons and the "were-wolf" movement in his radio speeches, with which he has been charged by the Russian prosecution.

I can be spared mentioning particulars in this connection, because Fritzsche could testify in detail. The speech of 7 April 1945, with which he is reproached, does not in the least glorify forms of warfare contrary to the international laws. It rather attempted to find a psychological reason or excuse for the active participation of civilians in the fighting toward the end of the war by referring to the suffering of the German people through the effective air activity of the Allies.

I must only reply to one point of the evidence:

General Rudenko submitted to Fritzsche a short document at the end of his cross-examination. It is the question of a copy of a short message, signed by Fritzsche, of 19 October 1944 addressed to Major von Passavant a wireless expert of the Propaganda Branch of the OKW. The Russian prosecution wishes to conclude from the contents of this communication, that Fritzsche had committed himself in the preparation and execution of some kind of "biological war." Since a conclusion cannot possibly be drawn from the contents, it is merely a covering message of five lines referring to the transmission of a letter of a radio listener to another department. Fritzsche's department received daily whole bunches of letters from unknown radio listeners. A subordinated official looked through such letters, of which hundreds arrived daily, and directed them wherever they would perhaps receive special consideration. Nothing different happened with the letter of the radio-listener Gustav Otto from Reichenberg, which apparently contained a suggestion to carry out "biological warfare." Although Fritzsche signed the transmitting letter composed by the subordinate official in his capacity of Department Director, he naturally did not know anything about the contents of the listener's letter. With the large number of daily communications from listeners it was completely impossible for him to read them. This listener's letter, in any case did not find any special attention in the Broadcasting Department. The copy of the transmitting letter, as can be seen from pencil notes made thereon, was also immediately put away. How can anything unfavorable be deduced against the defendant Fritzsche from this evidence? Especially since it is completely unknown what the likewise unknown listener meant by a "biological war."

Finally I have yet to point out the following: General Rudenko has read the document on the occasion of the cross-examination, and that from a Russian text. The German text, which appears in this form in the German Transcript on page 12315, and the English text, which appears in this manner on page 12606 in the English Record, differ in content considerably from the German original text.

If notwithstanding the insufficiency of this document—the meaning of which could in any case be clarified only by the "inclosures" which are lacking—the Prosecution believes it deserves consideration, the first requirement would be to have completely exact translations made from the German original text.

In concluding my estimation of evidence I wish to say: None of the documents brought up during the cross-examination of the defendant Fritzsche could modify the impression which he gave us during direct examination: To have spoken before this Tribunal in sincerity and truthfully: and that because of his own endeavor also to make by himself every possible contribution, so that an actual foundation for a proper judgment may be found. And going even further, all the statements made by Fritzsche were supported in all decisive points by the documents which I submitted, and particularly through the testimony of the witness von Schirmeister. The latter, who during the most meaningful period of 1938 to 1943 was the daily companion of Goebbels, was able to report directly and, I dare say, in an observing way, on the actual relations within the Ministry of Propaganda. The result of the evidence—I may repeat here what I expressed in the introduction—was unequivocal for my client. Contrary to the announcement made by Mr. Albrecht at the beginning of my final pleading, nothing during the proceedings could add to the contention that Fritzsche's importance in reality was greater than that diagram of the Propaganda Ministry showed.

The discussion of the bare facts alone ought to have made clear that Fritzsche can in particular bear no responsibility for what is, as far as it can be judged from afar, the actual part that may have been played by the extensive apparatus of the whole Third Reich propaganda in the plans and in the hands of a small initiated circle. If the restricted department in which Fritzsche cooperated was misused, then Fritzsche himself was exploited. The assumption that Fritzsche was Goebbels' closest collaborator, his right hand man so to speak, and even his acting deputy—an assumption from which the bulk of the accusation leveled at him are probably derived—is already refuted by the facts that have been discussed. The odium against Fritzsche on the alleged ground that he bears a responsibility equal or similar to that of Goebbels has already been definitely shown by the evidence to be unfounded. Alone, the actual actions and proceedings of my client ought to make it clear that the assertions of the Prosecution have gone much too far.

In the legal consideration of these acts and measures of Fritzsche by Captain Sprecher, it was quite striking that—as far as I can see also in distinction to the other defendants—at only one point was the quite general conclusion drawn that Fritzsche was during a definite period, the principal conspirator, because he was directly entrusted with the manipulation of the press. I need not mention here again that the factual grounds of assumption for such an opinion did not exist. Now I am only concerned with establishing, in view of the legal qualification by the Prosecution itself, that in his declaration his activity should be considered rather in the sense of forms of participation. The speech of the Prosecution points out in several places that Fritzsche had been called to account by this Court because of his aiding and abetting, he is characterized as an "accomplice" of Goebbels he had assisted in producing propaganda material, he helped in making possible an atmosphere of hate, he had supported and more of the same, thereby stressing that he could not have been among those who did the planning. On the other hand it is said also of this defendant that he instigated and incited thus taking an active part as instigator, stimulator, and inciter.

The first question now is: Is the accessory helper also a participator within the meaning of paragraph 6 of the Charter? This question, it seems to me, has not yet been discussed by Dr. Stahmer. But the case of defendant Fritzsche offers an opportunity for this, because he has been characterized to a particular extent only as an accomplice. I am, therefore, compelled to give the question closer scrutiny. These four concepts: leader, organizer, instigator, and participator are said to be equivalent on account of their external composition. The four possible perpetrators must also be dealt with in the same manner. These four concepts, so far as they differ linguistically, can therefore only explain in what different forms a plot can be fashioned. The one instigates, the other organizes, the one leads the gang, the other takes part in the plot in some other way. Therefore all four conceptions are closely connected with the common plan. They are united only because of the common plan. Only that makes them true accomplices. To make plans jointly, to want to carry something out jointly that is the main concept of these four subsidiary concepts. Only the functions amongst themselves can of course be different. They can also be shared by the conspirators themselves. If the conspirators have jointly invented the plan, have formulated it or, by agreement, have merely furthered it, then it should be of no consequence which part each one of them plays in its execution. It should therefore be basically also unimportant whether within this plot someone is the leader, the inspirator, or merely another participant in this plan. However, everyone presumably will have to participate in this plan. He must have recognized its purpose at least, for according to the words of the Charter, he must have "participated" in it and that either *a.* in the formulation or

b. in the execution of a common plan or

c. in some other conspiracy for the commitment of an individual crime.

Only then is he responsible for others when in the execution of such a plan, someone commits a crime.

The word "accomplice" refers therefore to the plan. He is an accomplice in the plan and is in no respect different from the leader or instigator. A more far-reaching meaning in an accessory sense must therefore be far removed from this concept.

In common law, the accomplice's concept as main concept has also an altogether different meaning for the accessory. By accessory, according to the common legal conception, only one of the forms of accomplice is understood, and that the form by which an outside deed is only supported or furthered. A deed which the accessory does not exactly want for himself. It signifies the dependence, the accessoriness of the bare support of the main deed. Article 6, last paragraph of the Charter cannot have such a meaning. There the participant is to be put on an equal basis with the accomplice, whereas in common law the accessory, as subordinate participant, can never be accomplice in a punishable deed. In common law the assistants are merely accessories. It cannot have been the intention of the creators of the Charter to regard the mere accessorial assistant as participant in the plan. Since whoever participates in a plan is to answer fully for the deeds of others, also than if he has only subordinately participated in the formation of the plan. However, on the contrary it must then follow: Whoever does not participate at all in the formation or discussion of a common plan, can therefore assume no full responsibility for that which others have done. It is thereby a matter of indifference whether the others committed a crime in the execution of a plan or only incidentally upon the occasion of its execution. The responsibility of the one for the deeds of the other can only exist when the plan binds them together. It is for this reason that the concept of conspiracy presupposes of necessity the idea that what is being done takes place under the impulse of a common will and a common knowledge in relation to the plan.

This sense of participation restricted to the plan is, in my opinion, expressed also in other parts of the Charter. Already in paragraph 1—and not only in paragraph 6, section 1—it is mentioned that in execution of the Four-Power Agreement of 8 August 1945, the "principal war criminals," the "principal culprits," the "principal conspirators," or whichever way it is expressed, should to begin with be called to account here before this Court. Assistants, accomplices, simple agents of execution, and all other merely dependent, accessorial perpetrators who do not belong to the central body—that is to say who are not connected with the conspiracy plan or are in closer agreement for the carrying out of a single crime—cannot be considered as belonging to such a group. Within the meaning of conspiracy and of the substitution of the one for the other connected with it, there can be no simple "helpers" at all.

For the defendant Fritzsche I have demonstrated that he—owing already to his position in the State and the party structure—cannot belong either to the restricted group of conspirators nor to the wider group of the organizations. Moreover Captain Sprecher has himself pointed out that Fritzsche is not represented by the Prosecution as the type of conspirator who would have thought out the all-comprehensive strategy. His particular field even lay outside the conclusion of the plan. But it was not necessary to have himself correctly understood the basic strategy to have perceived the aim, when he became the spokesman of the conspirators. I believe that the latter conclusion, if the concept of participator in the sense of a conspiracy is rightly estimated, embodies an error of thought. He who stood outside the makers of the plan certainly does not belong to the group of conspirators.

After these legal arguments which are even supported by the opinion of the Prosecution, I come now to this conclusion. The defendant Fritzsche, against whom it has not been proved here that he took part in any common planning, can on this account also not have been a participator in the alleged conspiracy. At any rate he cannot be punished according to paragraph 6, last section. According to the intellectual construction of the Charter there should be somewhere a limit fixed concerning the arraignment of a single person in these trials. When is anybody still a participator—accomplice—and when is he no more so, but only perpetrator or helper? Where is this boundary which sets off the responsibility for individual deeds from the responsibility for that which others have done? Because there must be a dividing line for this collective responsibility also. I mean the common plan is this dividing line. He who does not belong to those who did the planning should also be left out of the group of conspirators.

On the other hand the framers of the Charter provided

a. establishment of a single individual as criminal culprit even though he does not belong to the group of conspirators and *b.* declaration of an organization as such as a criminal organization.

If the defendant Fritzsche does not belong to the group of conspirators and as is established—was never a member of even one of the organizations being prosecuted here, he could be convicted only if he as an individual had committed crimes as covered by article 6, paragraph 2a to c of the Charter. In that case, however, just as in any ordinary criminal procedure, the Prosecution must furnish him the proof of a criminal offense. If he does not belong to the conspiracy, if he does not belong to an organization, the Prosecution cannot derive its support from a so-called legal assumption, an assumption merely said to result from membership in an organization. It is not possible to reverse the burden of proof.

The second question then is: Did Fritzsche as an accessorial accomplice or abettor belong to the class of those criminals of whom it has been proven that they as individuals committed crimes against the peace, a violation of law governing warfare, or a crime against humanity? He as an individual is not charged to have committed one of these crimes with his own hands. The charge is directed against him only by reason of his activity as an accessory.

As far as I can see, the establishment of the concept of the accessorial accomplice is not something foreign to the English and American criminal law. However, the common law is governed by the principle that the accomplice falls into the same class as the perpetrator, in other words that—irrespective of the measure of his personal culpability—he should be punished, in principle, just like the perpetrator. It is said that at all times the English law was inclined to apply the principle of equal punishment for perpetrator and accessorial accomplice. The reason for referring here to the English common law merely is to establish a link with the German concept of law. Thus, for the moment mere establishment of the fact that English law and American law know differentiation between the concept of a perpetrator and someone who merely acted as an accomplice may suffice.

On that point however, a decisive difficulty arises, resulting from the fact that there is a difference in the concept of right and of wrong between the Prosecution and the Defendants. The concepts are bound to differ because the Statute Law is not the same.

That is the reason why I cannot as yet conclude my legal argumentation: differences in concept, which may be equally common in both spheres of law, result in different inferences of law as far as Statute Law is concerned.

The British Chief Prosecutor referred to the individual responsibility of each single defendant according to the letter of paragraph 6, section 2 a to c of the Charter. In that connection he remarked that it is a commonplace in common law that persons who help a criminal and shield him, who give advice and help to a criminal, are criminals themselves. Perhaps he wished thereby to advocate the conception that according to the spirit of the development of English law such persons, by reason complicity in someone else's deed, should be punished in the same manner as the main perpetrator; that the accessoriness of the accomplice, if I understand Sir Hartley Shawcross correctly, is in principle without importance for consideration by common law. In practical effect this might mean that the difference between the concept of accomplices and accessories plays no part here, or at best might determine the degree of the respective responsibility for the measure of the individual guilt. Is it intended, in principle, to judge him who merely supports the deed of someone else exactly in the same way as applies to him who carries out the deed as his own? I may refer to the effects which such concept might have on the measure of punishment, for example. An effect which would be of particular importance only in connection with capital punishment that can be absolutely determined.

At this point it might be in order to say this: The legal maxim propounded by Sir Hartley Shawcross may indeed be commonplace for every member of the English or American legal professions. This does not hold true for a German defendant, however. As I also infer from the argument of the French Prosecutor, Dubost, this does not seem to hold true for French Common Law, because he pointed out that according to the principle of penal law, strictly speaking, all the defendants could in that case not be considered as main perpetrators but merely as "accomplices." And because the confines of common law concepts are too narrow, it is the opinion of the French prosecution that the deeds which are to be adjudicated here are not equal to the common law with its rationalistic statics, that it would be necessary to apply a law which goes beyond this.

The concept of conspiracy therefore, the science of the plot, and the practicability to declare an organization criminal, are to be the vehicle by means of which it will be possible to go beyond the common law. However, how about the case of a defendant who does not belong to the conspiracy nor to an organization? After all, law must be applied! This then leaves nothing but the common law for judging the individual deed. Which law other than general concepts such as, for instance, guilt, dolus, carelessness, and also the accessoriness of the accomplice can be applied? It is possible that through the establishment of new facts of the case, the Charter created new substantive law. But what is the juridical concept with which to approach these new facts of the case? Classification of actual circumstances will probably have to be made by means of the analogy of penal law concepts. As regards the facts of the case listed in paragraph 6 b and c of the Charter, these correspond essentially with the facts of a case in common law. A defendant as an individual who did not take part in laying out the plan, and who did not belong to an organization, can then be judged only according to principles which also must apply for every other delict of common law. If concepts such as the accessorial accomplice are involved, argumentation against a defendant can take according to common law only.

The legal consciousness has had to face the most complicated legal problems, particularly in connection with the doctrine of the form of participation; in other words with the question as to how an accessory should be classified according to the various possibilities of participation. From this in particular results the decisive question: is it possible that the Charter went so far as —I repeat: what is involved are common law concepts—it is a question here of banning if possible concepts of common law, of respecting the old established legal concepts of the defendants in judging the accessorial assistants. Is it possible that it entirely ignored even the completely different structure of Statute law?

In view of the utterly different nature of Statute law, especially with reference to the question of accessorial assistance, I ask permission for a few legal dogmatic remarks on the conception of German law. In all fairness and at least as far as the concept of an accessorial accomplice is concerned, a German defendant can be charged only with what is known to the concept of law adopted by his people and which, at the same time, is in keeping, morally, with his sphere of knowledge. That is the decisive point!

By reason of the provisions of Statute law in par. 49 of the Reich Penal Code there is not only a strict separation between the accomplice and the perpetrator as far as the concept is concerned, but necessarily and as a matter of principle he is also to be punished less severely than the perpetrator himself. Jurisprudence and judges, therefore, have made a sharp distinction between the perpetration of an act itself and the mere instigation or support of somebody else's act by accomplices. This distinction is made not only in accordance with external characteristics, and so according to objective factors, but also with regard to what occurs in the mind, and so according to subjective factors. During decades of the German law, particularly in the law of the Reich court, this is expressed in such a way that, in the case of assistance in somebody else's action, the accessory is said to have the animus socii, but the perpetrator himself the animus anctoris. According to German law the assistance is regarded outwardly, which means according to objective factors, only a furthering and support of the action of the principal perpetrator; the accessory must have helped to bring about success by his support. If he has not helped to bring about this success, then he is not an accessory. Then his action is not punishable.

Concerning the mental side of the deed, the dolus, the will of the accessory (animus socii) must be directed to the end that somebody else's action is supported with his knowledge. And so when judging what is going on within the mind of a perpetrator, German law also makes a sharp difference between the will and the knowledge.

And this discrimination is furthermore decisive as to whether somebody has given assistance at all.

I have stated before what Fritzsche was in any way able to know about plans or the execution of them from the range of his duties. Only if one had proved that he had a definite knowledge and will as an accessory to the fact could he be condemned. It would have to be further proved in the case of defendant Fritzsche whether what he knew and wanted in connection with an alleged furtherance is identical with what any of the main criminals actually did. Only when the knowledge and intent of both agree can one be an accessory at all. In this connection it is to be emphasized than an indefinite knowledge, a very general intent is not sufficient to establish the state of being an accessory. The accomplice must be concretely aware of the elements in a case which another is to carry out in accordance with his intention.

The Prosecution, however, also charges Fritzsche in various points with instigating specific crimes as an accessory. And so the third question is: Has Fritzsche been the instigator of any single crime?

At the beginning of these legal statements, I have already referred to the details of Captain Sprecher's prosecuting speech. To me it is doubtful if here the concept of instigation is meant in the legal-dogmatic sense of the common law. The concept of "incitement" is used essentially to the extent that it corresponds to the German legal concept of mere invitation (Aufforderung). This charge of instigation can only be raised so far as it can be said to concern the individual responsibility of Fritzsche for a specific crime mentioned in article 6 paragraph 2a to c. The assumption that Fritzsche was a possible "instigator" to a common plan within the group of conspirators cannot be substantiated in any case in accordance with what I have already explained at an earlier time.

Instigation as an accessory form of participation in the general legal sense presupposes, however, quite otherwise than in the case of an accomplice, in which a criminal will is only to be supported or maintained, that such a will must first of all be produced in the perpetrator. The psychological influence, unlike that of the accomplice, does not consist of affirming or strengthening the individual who has already decided to carry out the deed, but in first producing the will for the deed. The means for this can be of the utmost variety, but the perpetrator first must have his mind changed, brought around to it.

Assistance and instigation accord again as accessorial forms of participation, as in the case of instigation, a conscious and in the case of the instigator a designed causative connection must exist between his instigation and the decision of the perpetrator. The principle of equivalence is valid equally as in the case of assistance. The perpetration of a deed must correspond with the conception and the will of the instigator. The instigator is therefore responsible so far as his intention reaches. A possible excessus mandati cannot be attributed to him. From this follows the accessoryship not only of assistance but also of instigation!

The evidence has not furnished the slightest proof to the Fritzsche case that he has committed an individual crime as instigator through his transmission of news. Nothing has been demonstrated that he has instigated a single person to murder, cruelties, deportations, killing of hostages, massacre of Jews or others, or crimes mentioned in the Charter, or had as instigator caused a single crime by his transmission of news. Not a single passage from his nearly 1,000 wireless speeches could be produced from which such a conclusion of individual responsibility could be deduced. It could not happen from public speeches. The crimes which were committed were carried out by people completely indifferent to Fritzsche's propaganda. They received their urge or instructions from altogether different sources. These deeds were to be kept quite secret. The official news service should avoid handling this as much as possible. As this trial has shown particularly impressively, the perpetrators made the greatest effort to inform a very small circle, for example, of the annihilation of the Jews. What is self-evident in every other State Constitution, namely, that occurrences in the country should be handled through the press, was not permissible in a dictatorship. The people should not be asked whether they approve such incidents. The crimes established by this trial should not be permitted to be made public. Can one assume that under such circumstances the press and the radio were suitable means to instigate the perpetration of crimes? Is it not more probable that such incidents were kept specially secret from the press and the radio?

In no single case—even if the speeches of Fritzsche were ever so prejudiced—could it be reckoned that through public speeches he could evoke decisions for the perpetration of punishable deeds by a single individual.

Possibly the juridical indications of the Prosecution do not go so far. The Prosecution will reproach Fritzsche that he has contributed to produce an "atmosphere of hate."

Only through such propaganda was it at all possible for gruesome crimes as these to be committed in Germany. This reproach, however, is legally irrelevant. This charge would have legal importance only if the defendant Fritzsche had been among the group of so-called conspirators; if he had been the instigator of a common plan. I believe to have proved that such opinion is impossible. If he had actually brought about an "atmosphere of hate," his instigation of someone else—outside of the group of conspirators—to commit a certain crime would have been impossible legally speaking. Furthermore, according to the provision of the Statute Law of German Penal Code, a summons disseminated by radio would even exclude facts which the letter of the penal code requires in order to establish the charge of conspiracy. According to German jurisdiction as practiced for decades, there could be no conspiracy, because instigation could not have centered on a certain individual. Furthermore, German Law concerns itself merely with instigation to commit a concrete deed but not with instigation to commit punishable actions in general. In principle, therefore, a summons of some kind, directed toward a group of persons individually undefined, does not constitute incitement to complicity; it is rather outside the framework of legal relevancy altogether. It is quite self-evident, however, that Fritzsche's radio addresses were intended for an entirely unlimited group of persons. Furthermore and since he was seriously striving to find for the German press and radio propaganda a "foundation based on truth," could he have such an aim to incite to culpable actions? My client admitted in an impressive and unequivocal manner that he followed a tendency which was in keeping with the official German policy, when he passed on the news which he was expected to disseminate. In other words, he did not take advantage of the fact that international law did not place him under any restraint, and nothing in the evidence submitted has refuted his good faith. However, in the light of the law, when it is concerned with incitement to complicity, or with assistance given as an accomplice, good faith is equivalent with lack of will and lack of purposefulness.

This establishes:

1. that the defendant Fritzsche did not belong to the group of conspirators who planned,
2. tnat he was never at any time a member of a group or an organization which it is here proposed to term criminal;
3. that, factually and for legal reasons, he is not individually guilty of a war crime or a crime against humanity, neither as an accomplice nor according to the letter of law—as an instigator, and not even—also according to the letter of the law— as accomplice.

This will suffice, I believe, for my discussion of the question of evidence and legal conclusions. It is necessary though to mention one other thing: The Fritzsche case has also its human aspect.

Apart from the pros and cons or legal potentialities, another closely related question suggests itself, which must not remain without answer: Taking Fritzsche strictly as a human being, can he be expected to have had knowledge, to have been co-originator of all the monstrosities which were established in this Court? According to the interpretation of the Prosecution, a dolose instrument is the conspirator—of whom Goebbels was perhaps one—: he only who had knowledge of its aims and purposes.

Fritzsche's measures and utterances, however, were not dictated by criminal will. During his examination before this High Tribunal, Fritzsche pointed to the fact that he does not convoke his duty to obey. But he added that as far as his own person is concerned a criminal proposition was never made to him. And he furthermore declared: There was no compulsion for anybody to carry out an order in which he could not help seeing the intended crime. Undoubtedly, Fritzsche sacrificed his own convictions and had to have recourse to many a compromise. This, however, he did not do where he thought he discovered injustice, violence, and inhumanity. As is fitting to a journalist, he examined with care whatever reports reached him from abroad. In disregard to inherent dangers for his own person, he traced the news which concerned Germany itself, dangers which ambushed every person who tried to penetrate that which absolute secrecy intended to hide. He did not permit himself to be put off with paltry, vague explanations. He reported many details. I merely refer to his visits to Gluecks, Heydrich, and his investigations in the Ukraine.

To the extent that he discovered criminal purposes, such as the "Kommissarbefehl" and the plan to revenge inhumanely the air bombardments on Dresden, he fought against them with determination, in the latter case even with the help of a foreign Ambassador. And he was successful, too, as these two particularly conspicuous examples show. He did this because he followed the voice of his conscience. He did not first engage in lengthy deliberations as to the pros and cons. As regards the "Kommissarbefehl" he merely had heard of it as a soldier—he had never read it, nor did he know that it actually was carried into practice at any time—and he at once raised a protest. When Goebbels ordered him to announce the proposed killing of great numbers of allied fliers, he did not mind incurring the anger and the fury of his Minister. Dr. Scharping described this in detail. When he learned of cruelties in the concentration camp at Oranienburg, he even sounded an alarm. The culprits were punished immediately at that time. Dr. Scharping's affidavits, which I submitted, and others prove his implicit willingness to assist those who were persecuted for political or racial reasons if they applied to him. Most revealing is the tolerance with which he made the continued publication of the "Frankfurter Zeitung" possible. Other proofs along that line which are also submitted with my Document Book II are not negligible, and in the case of Fritzsche certainly cannot simply be passed over with the comment that with his other hand he "cold-bloodedly" abandoned others to death.

He was not willing to sacrifice his dignity as a human being, not even to the seeming demands of what paraded as idealism, or for the sake of an oath he had taken.

While the Prosecution has tried to darken the picture, I can also point to brighter spots, namely those which have bearing on him as the representative of propaganda.

Was he a liar—and even perhaps a notorious liar? That Goebbels was one is made clear by the revelations of this Trial. And as it was wrongly assumed that Fritzsche was his right-hand man, the implication was of course that Fritzsche had the same attributes. The assumption may be clearly refuted. It is my conviction that, had not Goebbels sought evasion of responsibility in death, we should not now see Fritzsche in the prisoners' dock here as representative of the Propaganda Ministry. The further assumption that all collaborators of Goebbels must have been wittingly at the service of his lies is unjustified. It would only be justified if it had been established here that Fritzsche was in a position to grasp everything including the real and most deep-lying connections. But that could only be determined in this Trial. Fritzsche remained entangled in error like millions of other Germans. Glaring abuses were to be seen everywhere. Fritzsche was not unaware of them. Indeed, he has declined to be characterized before this Tribunal as an opponent of Nazism. He has, however, claimed to have opposed abuses so far as he could recognize them. This entitles him to be put on a better moral plane.

Neither was he a zealot or a fanatic, possessed only by the idea or adoration of power and success and inaccessible to criticism. Of course it was a sin, indeed the grievous sin against the spirit, to have served the system.

The decisive point is, however, whether he was in a position to detect more than mere abuses. Falsehood nevertheless was already built into the foundation and anything built upon that was bound to be untruthful. It was not only the "thousand door Ministry," as it was once called, that was poisoned. The real reason why everything in Germany was poisoned by falsehood could best be detected by those who lived in a purer atmosphere.

Fritzsche did not even keep immune from the phraseology, but he used it perhaps with better taste than many others. He had occasion to claim here—and this is no mere empty phrase—that he has always acted fairly and honorably in every respect in his professional work. Dr. Scharping too has emphasized this in his affidavit. Is this not an indication that he really did not detect that the whole foundation upon which his work was built up was hollow and deceptive? Had he been a professional liar, he would not have made a point of doing fine and honest work, that of checking foreign reports and of seeking, in everything that affected him, a truthful basis for the press and radio.

The Prosecution has laid stress upon his rise in the Propaganda Ministry. Did they mean to imply thereby that he was particularly qualified as a liar? Actually, his career—however modest it was really compared to that of Hitler's other auxiliaries—has quite another foundation which has also been clearly stated here. He only made headway because he was qualified as a journalist and technician; not because he was particularly good at lying but because he talked better than many others.

As proved by the affidavits of Dr. Scharping and Frau Krueger Fritzsche lived on a modest scale. During his activity at the Propaganda Ministry he has gathered no riches, possessed no luxurious dwelling, and neither asked nor received any gift.

Indeed, the Prosecution has made no assertion to the contrary. It therefore does not appear astonishing that those who not only heard his voice on the Radio but also knew him personally should have particularly emphasized his human qualities. Dr. Scharping declares in his affidavit: It was a distinction to be allowed to work with him. Is it in keeping with human experience that an impostor should win such consideration? I believe human esteem can only be won by an honest character. Those who are in daily intercourse with a person can find out whether he is a liar or not. And if his speech does not betray him, then his eyes will.

There may be many possibilities of contradicting that somebody who has cooperated in the propaganda of the Third Reich is nevertheless honest and a lover of truth. The most immediate explanation is probably that which can be taken from Fritzsche's own remark which I repeat here: He said he felt—and this may well be significant for the verdict if not for History—that he was deceived by Hitler too!

Before this Tribunal, Fritzsche has not only defended himself but the German people as well. To what extent he is himself responsible to the German people for his persistent and ultimate exhortation to carry on the war to the very end is not a matter to be decided here.

It may be that Fritzsche did not, like others, realize that he was serving an evil cause, or it may be that he did not turn from the State leadership for the sole reason that he wished to share the cup of bitterness with the German Nation to the last dregs. But guilty in the sense of the accusation brought against him before the Tribunal he is not. I request his acquittal.

2. FINAL PLEA by Hans Fritzsche

May it please the Tribunal: The Chief Prosecutors in their final speeches have repeated several of the accusations against me although in my opinion they have been clearly refuted by the taking of evidence.

The main points in question I have summarized and I do not propose to read them. If it is not in contradiction to the rules of this Tribunal and if it would please the Tribunal, then I should make the request that this summary, which amounts to six pages, should be taken judicial notice of by the Tribunal. They are available for translation.

Yet I should not like to waste this last chance for a last word at this Trial by quoting the details, all of which can be found in the records and documents. I shall have to deal with the entire complex of the crimes since the Prosecution alleged that I had been connected with these crimes through a conspiracy.

With reference to that accusation, I can only say that even if I had made propaganda during my radio speeches which the Prosecution now accuses me of, even if I had represented the teaching of the "Master Race," even if I had preached hatred against other peoples, even if I had incited to aggressive wars, acts of force, murder, and inhuman actions, even if I had done all that, then the German nation would have turned away from me and would have turned down the system for which I spoke.

Even if I had done it in a hidden form, then my listeners would have noticed it and adopted a negative attitude.

But the misfortune is contained in the fact that I did not represent all these trends according to which Hitler, together with a small circle of his accomplices, was acting secretly; this circle which, according to the testimony of the witnesses Hess, Reinecke and Morgen, amongst others, is now slowly emerging from the mist in which it had been hidden until now.

I believed in Hitler's assurances of an honest will for peace and through that I strengthened the trust of the German people in them.

I believed in the official German denials of all foreign reports of German atrocities. And with my beliefs I strengthened the trust of the German people in the cleanliness of the leaders of the German state.

That is my guilt. No more, no less.

The prosecutors have expressed the horror of their peoples caused by the atrocities which occurred. They did not expect that much good would come from Hitler, and they are shattered by the extent of what really happened. But then, you must try to understand the disgust of those who expected much good to come from Hitler and who now have to see how their trust, their good will, and their idealism had been misused. I am in just that position of the man who has been deceived, together with many, many other Germans, of whom the Prosecution say that they could have recognized all that happened from the smoke rising from the chimneys of the concentration camps, or the mere spectacle of the detainees.

I feel that it is a great misfortune that the Prosecution have pictured these matters in such a way as if all of Germany had been a tremendous hideout of crime. It is a misfortune that the Prosecution are generalizing the extent of the crimes, which are in themselves horrible enough. But opposed to this I must say that anyone who once during the years of peaceful reconstruction had believed in Hitler, he only needed faith, courage, and the will to make sacrifices in order to continue believing in him, until through the discovery of carefully hidden facts he could recognize the devil in him. Only thus can the struggle be explained which Germany carried on for 68 months. Such a sacrifice does not grow from crime but from idealism and good faith and from clear and apparently just organization.

I regret the generalization which the Prosecution have applied to the crimes, because they are bound to enlarge the mountain of hatred in the shadow of which the world lies to-day. Yet the time has come to interrupt the circle of that hate which has dominated the world until now. It is high time that a halt should be called to the harvest and the sowing of a new seed of hatred and that the seed must be changed. After all, the murder of five millions is a terrible warning, and the world has at its disposal the technical means for its self-destruction. For that reason, the Prosecution should not replace hatred by yet more hatred when they present their case.

It is my right to say this before my conscience because I have not preached hatred, as the Prosecution will have it, nor have I closed my ears to pity. To the contrary, again and again, in the middle of the hardest struggle, I have raised the voice of humanity. The vast majority of my speeches prove it, which, after all, can be considered at any time when one considers the allegations of my adversaries. Such speeches, which even now have not been submitted to the Tribunal, cannot simply have disappeared from the surface of this earth.

Admittedly, it is perfectly possible, alas, even understandable, that the hurricane of disgust which swept the world because of the atrocities which were committed might sweep away the borders of individual responsibility. If that happens, if collective responsibility is to be attached even to those who, in their good faith, were misused, then, Your Honors, you must hold me responsible. As my defense counsel has emphasized, I do not wish to hide behind the millions of those men and women acting in good faith who were misused. I will place myself before them, before those for whom my good faith had been an additional guarantee for the cleanliness of the system. And yet, this responsibility of mine is only valid for those who acted in good faith, not for the originators, collaborators, and those who knew of those atrocities beginning with murder and ending with the choice of living human beings for anatomical collections.

Between these criminals and myself there is only one tie; they merely misused me in a different manner than they misused those who became their physical victims.

It may be difficult to separate German crime from German idealism. It is not impossible, if you draw that dividing line, then you will save much suffering for Germany and for the whole world.

XXIV. MARTIN BORMANN

FINAL ARGUMENT by Dr. Friedrich Bergold, Defense Counsel

Your Lordship, Your Honors:

The case of the defendant Martin Bormann with whose defense I have been commissioned by the Tribunal is an unusual one. At the time when the National Socialist Reich was still shining the defendant lived in the shadow, he kept on being a shadow at this trial and is, in all probability, today, too, among the shadows as the dead were called in ancient times. He is the only one of the defendants who is not present and against whom Article 12 of the Charter is applied. It seems as though history wanted to preserve the continuity of the genii loci and to see in the very town of Nurnberg a discussion of the problem of whether and in how far the greatest probability for a defendant's having lost his life will be an obstacle to a trial in absentia of such a man. For in Nurnberg an adage has come down from the Middle Ages to our times which says the Nurnberg people would not hang anybody lest he be apprehended first.

In other words, it was in Nurnberg in old times already where the question of whether a trial of an absentee can be carried out was discussed in an excellent manner.

[The Tribunal refused to hear the remainder of Dr. Bergold's argument regarding the advisability and the right of the Tribunal to try Bormann.—Ed.]

I cannot and will not criticize the Charter. I wish merely to establish the fact that the Charter has created an unheard of novelty. I am, however, of the modest opinion that, in view of this specific novelty in the legal history of all times and countries, the High Tribunal should carefully consider whether at the present stage of the proceedings it will enforce the right granted by Article 12 of the Charter to prosecute in absentia. Since a revision of the sentence is no longer possible, the proceedings in my opinion should be carried out only if by a corresponding application of the fine and clear principles of Russian law it is first proved that the defendant Martin Bormann is wilfully evading the court and secondly that the circumstances are not in any respect subject to the slightest doubt. As the Charter does not stipulate more clearly when and under what conditions the Tribunal is to enforce its right, the latter must make a law for itself.

Owing to the incontestable nature of the sentence, the Tribunal's responsibility in this particular case is a heavy one. My opinion that the sentence is final is also shared by the high Tribunal, as in the last phrase of the public charge against the defendant Bormann it is stated explicitly that should the defendant be found guilty, the sentence will be applied without any further procedure as soon as he is apprehended.

But in my opinion it has not been proved at all that the defendant is wilfully keeping away from justice. I think that as revealed by the examination of the witness Kempka it is even highly probable that the defendant Bormann is already dead. Witness Kempka has stated that on the night of 1st to 2d May 1945, together with State Secretary Naumann as first, the defendant Bormann as second, the Standartenfuehrer Dr. Stumpfecker as third, and himself as the fourth in that order, he had tried to flee through the Russian lines by keeping close to the left hand side of an advancing tank. Bormann was walking close to the middle of the tank, so the witness had the impression that Bormann's hand was holding on to the tank. That action seemed to the witness necessary in order to keep pace with the rolling tank. That tank, having passed anti-tank obstacles and having advanced some 30–40 meters beyond, was blown up into the air presumably by a direct hit of an anti-tank grenade (Panzerfaust).

The witness observed without any possible doubt that in the immediate vicinity of the tank just where Bormann walked a darting flame burst forth from the exploding tank, knocking down Bormann and State Secretary Naumann walking immediately ahead of him. Thus Bormann found himself in the center of the explosion which was so violent that the witness is convinced Bormann must have died under such circumstances without a doubt. It cannot be maintained that owing to the fact that the witness had escaped the violence of the explosion Bormann also must have been saved. It should be noted that Kempka was running behind the tank on the left hand side and thus was at a distance of some 4 meters from the explosion proper. Furthermore, he had additional protection in the person of Dr. Stumpfecker, running in front of him, whose body was thrown against him by the explosion, serving as cover. Kempka has testified that Bormann was wearing the uniform and the rank insignia of an SS-Obergruppenfuehrer at that time.

Even if Bormann had not been killed on this occasion he would certainly have been wounded so seriously that it would have been impossible for him to escape. Unquestionably he would have fallen into the hands of the USSR troops who according to the affidavit of the witness Krueger had already been quite close to the Reich Chancellery and had occupied it already on 2 May 1945 owing to the fact that the defenders had fled. With the loyalty the USSR is showing in these proceedings she would have transferred Bormann to the High Tribunal for trial.

There being only two possibilities—at least in my opinion—the first of which, namely that the wounded Bormann fell into the hands of the USSR, has been proved not to be true, then only the second possibility can have happened, namely that Bormann lost his life. I am therefore of the opinion that I have proved with sufficient likelihood that Bormann is dead.

In my opinion one should not be allowed to say that until death is established with absolute certainty a man is to be supposed alive. This is a supposition which I, the defense counsel, would have to refute. A legal assumption of a person being alive has existed in all countries of the world but only in the field of private law and only for the purpose of regulating conditions pertaining to inheritance or matrimonial property laws. However, a legal assumption of a person being alive has only very seldom been stipulated, e.g., in Common Law and in the Prussian Law and even there it is contested.

The Civil Code knows of no assumption of a person being alive but instead only admits the declaration that a person is missing in the eyes of the law. Common Law neither provides a declaration as to the death of a person nor a special one as to a person being alive. Russian law permits already after a short period of time a declaration as to a person being missing in the eyes of the law, and this may be followed by the declaration of the person's death. But even in these stipulations no assumption can be found as to the person being alive.

Whatever is the case in the field of civil law, it is nevertheless a fact that in the field of criminal law there exists no assumption as to a person being alive, in any country. If, however, criminal law does not recognize such an assumption as to a person being alive, it is not my duty either to refute such an assumption as to a person being alive. It must be enough when such circumstances are proved by the defense as lead one through a reasonable evaluation of the usual course of life, as I have already shown, to conclude that a defendant is dead.

I am, therefore, of the opinion first of all that the death of the defendant Bormann was proved with sufficient probability, in fact with such great probability that the proceedings would accordingly have to be suspended entirely and forever since the Charter does not recognize a trial of dead persons. If there were such a thing as the trial of a culprit after his death the prosecution, according to all logic and reason, would have to indict the real heads of National Socialism.

But apart from all this, it is not at all proved in my opinion that the defendant Bormann is intentionally evading the trial as long as the possibility exists that the defendant is dead. It is correct that the Charter does not recognize such an assumption for the procedure against a defendant who cannot be found. However, the Charter is rather taciturn on this subject and I have already stated that I am convinced the High Tribunal should examine very carefully whether it should exercise its right in this special case of the defendant Bormann. Considering the finality of the verdict it seems to me fair and just in the case of Bormann to consider at least the general legal principle of all civilized countries by which a defendant must be guaranteed a hearing even if only after his arrest. Thus by suspending the proceedings one would avoid creating accomplished facts as long as it is still possible that Bormann's absence can be excused.

May I point out in this respect that paragraph 12 of the Charter, second section, expressly refers the Tribunal to the interests of justice which it should consider in examining the question of whether it intends to try in absentia cases other than where the defendant cannot be found. These interests of justice are not unilateral and are not directed against the defendant exclusively. True justice is always universal. In all laws of the world it demands that as far as possible in the eyes of justice the interests of the defendant shall be protected as well.

In the case of the defendant Krupp's illness, the Tribunal already exercised its right not to try a person in absentia. Even if this case cannot quite be compared with that of the defendant Bormann the decision should be considered in the present instance too.

Just because of the peculiar character of the case and in view of the testimony of the witness Kempka, one can by no means consider the fact as proved that the defendant Bormann deliberately stays away from the Tribunal, because however the matter is viewed, one cannot ignore the possibility that—even if he had been saved and had not fallen into the hands of the Allies—he may have been injured permanently and to such a degree that neither physically nor mentally he is in a position to surrender to the Tribunal. It is for this very reason that after thorough consideration I believe that in the interests of true justice the Tribunal should suspend proceedings against the defendant Bormann.

Such a decision, however, is also justified according to the second principle which was formulated by the Russian law, namely that proceedings shall as a rule be permitted only if the circumstances of the case are no longer subject to any doubts.

The defendant Bormann is absent. He has not even been able to defend himself against the charges made against him. He has not been able to give me any information and I have not been able to find any witnesses who would have sufficient knowledge of the matter and who would be able to disclose to me any exonerating evidence concerning the accusations made.

Now as ever in the course of these long proceedings Bormann's person and activity remained in that obscurity in which owing to his character the defendant already kept himself during his lifetime. The charges which many co-defendants have made against him, perhaps for very special reasons and obviously in order to further their own defense and exonerate themselves, cannot for reasons of fairness be taken as the basis of a judicial decision. The prosecution has already stated quite frequently through its representatives that the defendants would endeavour to throw the main blame upon dead or absent men for the acts which are subject to the Tribunal's jurisdiction. Some of my colleagues have followed these tactics of the defendants in their defense speeches. Perhaps it was right to do all this. I cannot judge the matter. Besides, I have no authority to form such a judgment.

But nobody knows what the defendant Bormann could have answered these men if he had been present. Perhaps he would have been able to show that his entire activity was not the cause for the happenings which the indictment deals with, furthermore, that he did not have the influence which is imputed to him as the secretary of the Fuehrer and the Party.

It is known all over the world, that to secretaries and chiefs of central chancelleries, just like to the princely valets in the times of absolutism, has always been ascribed considerable influence upon their superiors, as it is in the nature of things that through the hands of such secretary must pass everything which can only be handled officially. But what in a modern State can evade the Moloch of bureaucracy?

The Document Book and the Trial Brief presented by the prosecution do in no case contain a definite indication, that in the incriminating events and measures Bormann personally had effective and outstanding influence on the actions and measures of the third Reich, of the NSDAP, and even of Hitler himself, and of how strong that influence had become.

In the comments to the decree of Bormann printed in Volume

II of the official compilation "Instructions, Directives, and Announcements of the Party Chancellery", *p. 228*, presented as Bormann Exhibit 11 in my book of documents, it is stated that the party chancellery was an agency of Hitler, which he used to direct the party. Expressly emphasized is the fact that since 12 May 1941 Hitler had again taken over the full and exclusive direction of the party. The head of the party chancellery, at that time Bormann, had been charged to inform Hitler continually about the work situation at that time in the party and to let him know of all circumstances which were important for the taking of decisions in party affairs. This had to be done according to Hitler's fundamental directives and the determination of the latter, especially as regards their political aspect, the supreme chief of the party had reserved for himself.

Thus it is shown that the party chancellery was the central chancellery for matters concerning the home policy of the Reich leadership and through this channel were sent up to Hitler all suggestions and information coming from below, while directives coming from Hitler were passed down by it to the lower levels.

It is right to say that a man in such a position can have a great influence if there is a man who can be easily influenced at the top; but it is also correct to say that a man in such a chancellery can play a purely formal role as the head of a liaison agency if at the top there is a dictatorial autocrat who cannot be influenced and if the chief of the chancellery has no special ambition nor any special abilities.

The proceedings which have been held for many months under this roof have shown which one of the two alternatives is more likely. It is obvious that seen from lower levels the head of the chancellery would appear influential, even in the case of the second alternative, because everything went through his hands, and because any blame for subordinates passed through this agency, and because all mistakes, which arose in the country with the other officials, were reported there. These officials and subordinates, however high a rank they may have held and even though in part they may have feared the chief of the party chancellery—perhaps indeed only for reasons due to their personality or mistakes—these are not the right people to enlighten us as to which of the two alternatives described is the proper one. As long as Bormann does not appear and is not heard personally, the true part he played remains obscure. Nobody, even the High Tribunal, could ever pass a reliable sentence. The whole case remains dubious.

It remains dubious even in the individual points. I would like to demonstrate this by just a few examples.

My esteemed colleague of the defense, Dr. Thoma, has stated that Bormann prevented the defendant Rosenberg from following his policy. For this he referred to the memorandum of Dr. Markulls, submitted as R–36. But this document is nothing other than a comment on an unknown, unproduced Bormann Document.

Markulls declares expressis verbis, that he translated Bormann's formulations into the language of a simple member of the German civil service, and presented them more pointedly. So, only Bormann could enlighten us in this case and tell us whether he wished his writing to be understood in this way, or whether Markulls twisted the meaning and sense of Bormann's writing so that only Bormann could disclose whether this writing, like almost all the Bormann Documents submitted, did not simply transmit the utterance of a Reich leader or of Hitler. So this case, too, seems altogether doubtful. An explanation can hardly be expected. Furthermore, it must be pointed out, that almost all the documents which the prosecution has gathered together in its document book are in general mere reproductions and publications of a Hitler Decree or a Hitler Instruction. Bormann transmitted these instructions to the subordinate agencies with an accompanying letter in order to inform the agencies concerned. This is an activity which like office work has to be done even in the most terrible tyranny and in the most reprehensible despotism—how much more so in a modern state structure like the National Socialist Reich. Some man has to forward all the instructions and orders to the subordinate agencies, that is a purely formal activity. It could be done as well by a plain office boy as by a brilliant Reich leader.

From the transmission of such instructions, according to office routine—I mention for example the Documents 069–PS, 1950–PS, 656–PS, 058–PS, 205–PS, and even the famous document 057–PS can only be considered as a transmission of a Hitler directive and opinion—from such a method of transmission nobody can draw the conclusion that the forwarding party had an influence on the decrees, orders and decisions. It is possible, but it certainly has not been proved.

But before a sentence is passed, this question of influence should be entirely clarified. Because if in the transmission of an order, according to chancellery routine, one could see any offense—whereby one would even come to condemn the women who wrote such orders on the typewriter—the verdict of justice must judge differently the importance and severity of the punishment for such clerical work on orders, from that which should fall upon a man whose collaboration was a decisive factor in causing such orders and decisions, and who, by his influence and advice, led the chief of state to deliver them. All this is not clear in Bormann's case and remains dubious. The empty word of the codefendants, whose motives can never be entirely unveiled, saying that Bormann exercised great, even diabolic influence is no proof.

The other documents of the prosecution only prove that Bormann, according to the decree of 29 May 1941, 2099–PS, and to the decree of 24 January 1942, 2100–PS, arranged for an exchange of correspondence between the individual Reichsleiters and forwarded their desires and suggestions. As an example I mention Documents 056–PS, 072–PS, 061–PS, 656–PS. Nobody can derive with certainty from these activities as a go-between, which were necessary from the standpoint of administrative work, the extent and true nature of Bormann's influence.

Further documents show that Bormann very often served as a mere stenographer, and took the necessary notes during Hitler's discussions with some of the defendants. This is proved by Document L–221 concerning the annexation of the "Eastern Territories" (Ostraumannektion) and the Russian Document USSR–172. But in any case such documents do not make clear whether and how he influenced in such sessions the policy and the measures of the Third Reich. According to all rules, a stenographer has no influence at all. He only fulfills an automatic activity.

I would not like to be misunderstood in this. Far be it from me to dispute the fact that Bormann occupied quite an important position in the leadership of the Third Reich. But no clear view has emerged during this trial as to the real weight Bormann could throw into the scales or to what extent his importance was increased and inflated by the bad conscience of third parties, and finally of what his influence actually consisted. Statements of the other defendants, which were made for their own defense, do not constitute relevant evidence. At any rate, the document book of the prosecution contains almost exclusively documents like those I have just examined closely.

Accurately speaking, Bormann only did what was legal in Germany. This is revealed in the documents I submitted, e.g., Bormann-Exhibit 2, 3, 5, 7, in which he repeatedly pointed out to party offices that any illegal action against Jews was not permitted.

It is characteristic for Bormann's case that not even measures against Jews could be proved against him. He never did more than forward such instructions and bring them to notice or publish them, as it was prescribed by the law and as followed from his clerical position as party secretary. Even the great conference of

12 November 1938, which was held under the chairmanship of Mr. Goering and from which emanated a series of laws against the Jews, is only connected with Bormann's personality insofar as Bormann forwarded to Mr. Goering Hitler's instruction ordering that such a conference be held. In any case it has not been made clear at all what influence Bormann himself had on these questions. But how can a just Tribunal determine the extent of an appropriate punishment, if the part played, if the participation of the individual defendant in the offense is not clearly established? Nobody can say that there is no doubt about the circumstances of the case.

With respect to the first idea, it seems to be most certainly proved by the document book of the prosecution that Bormann was one of the most zealous in the fight against Christian churches. Most of the documents quoted in the Trial Brief referred to this point. It is certainly correct to say that Bormann was philosophically and according to his attitude a violent opponent of the Christian doctrine. But, such a spiritual attitude in itself is neither an offense nor even a crime before the whole of mankind, which embraces so many different conceptions of the world and the higher connections and will perhaps give birth to many more.

In modern times there are countless convinced atheists. In other countries of the globe, too, there are officially recognized organizations which oppose the Christian interpretation of the world, and at the turn of our century there were big associations in many countries which had pure materialism as their philosophical system and the negation of spiritual things openly inscribed on their banner. No one can be punished for wishing to teach others the precepts of his ideology or for wanting to convert them to his point of view. The modern world still recalls the horrors of the Inquisition. Therefore, Bormann could only be punished if it were proved that he participated in a real religious persecution and not merely in an ideological struggle.

In my opinion the two most important pieces of documentary evidence which the prosecution has produced against Bormann, namely Documents L–75 and 089–PS, do not show that the defendant Martin Bormann in his official position undertook anything against the churches as religious institutions. The quintessence of Document L–75 is contained in the sentence which says that from the incompatibility between National Socialist and Christian ideology it must be deduced that any strengthening of existing Christian confessions and any furtherance of new ones arising is to be rejected by the party. It is of no importance for what urgent reasons Bormann came to write such a sentence at the end of his letter. One need not discuss the fact that failure to strengthen a religious conception which one opposed on philosophical grounds does not constitute religious persecution. Nobody is obliged to support a religious conception. It is not permissible to direct one's attention only to excited arguments stating that a religion should not be strengthened and to disregard the conclusions from such considerations.

It is futhermore important in this connection that we received only one copy of this document, a copy which a Protestant minister by the name of Eichholz made out for himself. Whether the reproduction of the contents of Bormann's statement in this document is fully correct has not at all been proved. In any case the document in this form does not represent true evidence.

In Document 089–PS, which may be recognized as being authentic, Bormann takes indeed a very definite stand against the church. It finishes, however, and this is the only fact which should be considered for the verdict, by saying that no National Socialist teacher be reproached for teaching Christian religion and in such a case the original text of the Bible should be used; any new interpretation, comment, or taking apart of the text of the Bible is to be avoided. Therefore, Bormann, despite his previous philosophical attack against the church takes here the legal standpoint that the Christian dogma may be freely propagated. Could a more loyal action ever be expected of such a strong opponent of a doctrine?

The remaining documentary evidence does not reveal any real persecution measures either. The fact that Bormann on Hitler's order prohibited the admission of priests or of members of certain religious associations to the party and that on Hitler's order he forbade priests to be appointed to leading positions in the party in order to prevent dissensions is no religious persecution. The fact that during the war he demanded that the church make the same sacrifices as the other institutions of the State does not represent a criminal measure for religious reasons. That within the closing of many lay institutions which was to take place in order to make a better use of human reserves of the nation he strove for the closing of church institutions too; that within the limitation of the number of copies and number of pages of lay publications he wished that church publications be limited also, does not come under the provisions of Article 6 of the Charter.

It is true that he let himself be guided in this respect among other things also by his anti-clerical attitude. But when otherwise the same measures were taken in Germany against other institutions and other publications, too, measures which as war measures were supposed to be only temporary, one cannot speak of an actual religious persecution. Not even Bormann's participation in originating the persecution of priests has been submitted or proved at all.

It results from all documents that Bormann always adhered to the effective legal stipulations so that he, who was so eagerly intent on complying with Hitler's orders, certainly observed strictly Hitler's decree which directed at the beginning of the war that all measures against the church be discontinued.

Therefore, it may be said in conclusion that this matter, too, cannot be really cleared up despite the numerous documents presented. Documents alone do not suffice to dissipate all doubts on the case. Especially with respect to the importance and weight of Bormann's share in persecution measures against the church it seems necessary to determine Bormann's personal responsibility. Thus, this fact also remains somewhat obscure. A basis for a just determination of the amount of punishment cannot be established.

I shall not take up the time of the High Tribunal by exhibiting further details. I think that the indications I have given are sufficient to show that even the documents presented by the prosecution prove in any case only one thing with certainty, namely, that Bormann in his capacity as chief of the Party Chancellery held "as ordered by the law" an intermediary position in the clerical, secretarial dealings between the head of the Reich and the subordinate agencies and in the dealings among those subordinate agencies.

Anything else is only an assumption which has not been definitely proved, in any case not with that certainty which must seem essential for the sake of justice in order to pass a verdict in absentia and without hearing the defendant, especially with respect to the severity of the punishment. Unfortunately, a legend has been woven around Bormann's personality, his activity, and his survival. But for the sober judgment of jurists, legends are not a valid basis for a sure verdict free from any doubt.

In view of the innovation created by the Charter in the history of law of all times and all nations in passing a final, irreversible sentence upon an absent defendant, I beg the High Tribunal to make use of its right to carry through such a procedure only after having considered the hitherto existing legal conceptions and especially when examining the case to consider the prerequisites set down in a particularly precise manner by the Russian law.

I, therefore, expressly propose that the Tribunal decide to suspend the proceedings against the defendant Bormann until he is personally heard and can personally state his case, and that the Tribunal make no use of its right according to Article 12.

PART II

PRE-TRIAL INTERROGATIONS*

I. HERMANN WILHELM GOERING **

Testimony of Hermann Goering, taken at Nurnberg, Germany, on 27 August 1945, by Colonel John H. Amen, IGD, OUSCC. Also present: Mr. Ralph Albrecht; OUSCC, T/4 Frederick Schnable, Interpreter.

Refusal to Take Oath Before Testifying

Q. Will you raise your right hand?

A. Before that, I want to get some instructions in law regarding which kind of law I am going to be sworn for. I would like to know whether this is only a hearing, or a regular trial or what it is.

Q. You are being interrogated, and you are being asked to be sworn, in order to tell the truth.

A. If I am accused, I can't be sworn in.

Q. You don't have to be sworn if you don't want to. You have not yet been accused of anything.

A. I am ready to tell you the truth to the best of my knowledge.

Q. Have you any objection to being sworn then?

A. I have those objections because I don't know what my position is here now.

Q. In other words, you refuse to be sworn?

A. No, but I am ready to speak the truth to the best of my knowledge. There is another reason: I can't control the interpreter and do not know whether he interprets correctly what I say, and I could only confirm an interrogation if I was given a German record which I would sign if it was correct.

Q. Nobody has asked you to put your signature on any document.

A. Well, if that is not so, I am not forced to take an oath. I have been interrogated before, and I made statements and when I read them afterwards they were exactly the opposite of what I said.

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*Other interrogations previously published in Nazi Conspiracy and Aggression, but not otherwise referred to in this volume are as follows:

Blomberg, Werner von: I. Supp. A, p. 1298.

Doenitz, Karl: 3150–PS, Vol. V, p. 911, D-866, Supp. A, p. 988.

Funk, Waltehr: 2828–PS, Vol. V, p. 478; 3544–PS, Vol. VI, p. 217; 3952–PS, Supp. A, p. 682; 3953–PS, Supp. A, p. 683.

Schacht, Hjalmar: 3724–PS, Vol. VI, p. 463; 3725–PS, Vol. VI, p. 464; 3726–PS, Vol. VI, p. 465; 3727–PS, Voy. VI, p. 478; 3728–PS, Vol. VI, p. 485; 3729–PS, Vol. VI, p. 501.

Speer, Albert: 3720–PS, Vol. VI, p. 438.

Schwerin von Krosigk, Lutz Graf: 3731–PS, Vol. VI, p. 535.

**See also documents 3593–PS, Vol. VI, p. 298; 3730–PS, Vol. VI, p. 530; TC–90, Vol. VIII, p. 534.

Q. Do I then understand that you refuse to be sworn?

A. Only after I saw what I said I want to give the oath on my statement.

Q. In other words, if you were given a chance to read what you say, you will then swear to it, if it is what you said?

A. Yes.

Hossbach's Records of Hitler's War Conferences

Q. Are you acquainted with Hossbach?

A. Yes.

Q. What was his full name?

A. I want to mention at this time that I have been asked by American officers very often for the first names. In Germany it is not usual to use the first names, and I don't even know the first names of my closest collaborators.

Q. What was Hossbach's job?

A. When I first met him, he was chief aide de camps to the Fuehrer. Later he reverted to the General Staff from where he had come. I met him again during the war for a few minutes when he commanded a division. I don't know what happened to him afterwards.

Q. Did he enjoy the confidence of the Fuehrer?

A. He had the confidence of the Fuehrer during the part of his career in the army but lost it later in connection with the Fritsch case. However, it was always our opinion that Hossbach was never a warm supporter of the Fuehrer.

Q. What were his duties in the year 1937?

A. At that time he was Chief Adjutant of the Fuehrer.

Q. What were his duties in that position?

A. He was Chief Adjutant and as such was responsible for the military office of the Fuehrer and all the other duties that an Adjutant normally performs. As far as I remember, he was also a member of the General Staff at that time being a Personnel Officer for General Staff Clerical Personnel.

Q. Did he act as the recorder of what transpired at various meetings attended by the Fuehrer?

A. Not officially. Not unless the Fuehrer gave him a special order to do so.

Q. Did the Fuehrer from time to time give him official orders to record what transpired at meetings?

A. Not in my presence, but I wasn't there all the time. But I am of the opinion that he might have made notes without having received any special orders to do so because he was in close contact with the Chief of Staff of the Army to report to him about it afterwards.

Q. But you have attended numerous meetings, have you not, at which Hossbach was present and made notes and recordings of such meetings?

A. I never paid any attention if in the many meetings which I attended and at which Hossbach was also present, he made any notes or not. I never paid any attention if he did make any notes.

Q. But if minutes of various meetings are in existence, signed by Hossbach, they are doubtless authentic, are they not?

A. They don't have to be authentic. It is possible that they reflect only an opinion of Hossbach of what the Fuehrer said. I know for myself that I sometimes, when I saw the protocols which my Adjutants had taken, told them that some of the things were incorrect or some of the notes had another meaning, and I know that from my own experience.

Q. I am not talking about your Adjutant. I am talking about Hossbach.

A. Therefore, I think that the same thing could also apply to Hossbach.

Q. Do you know of any case where Hossbach ever incorrectly recorded the minutes of a meeting?

A. I have never seen any of Hossbach's reports and therefore I can't say anything about them.

Q. Do you recall a particularly important meeting which was held in Berlin on 10 November 1937?*

A. In Berlin?

Q. Yes. A meeting at which the Fuehrer stated that he had decided not to discuss the matter in the cabinet because of its outstanding importance?

A. I can't recall the date.

Q. Will it help you to remember if I tell you who were present?

A. Maybe.

Q. The Fuehrer, Blomberg, von Fritsch, Raeder, Goering, Neurath, and Hossbach as the recorder.

A. Such conferences took place two or three times.

Q. But I am asking if you can recall a particularly important one which took place in November of 1937?

A. No. I don't recall this certain conference.

Q. Will it help you to remember if I suggest that it was a conference at which the Fuehrer expressed his future plans of action?

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* See document 386–PS, Vol. III, p. 295.

A. He did that, too, more than once. It is very difficult to say. The Fuehrer was afraid that the army, in particular, did not carry out his rearmament program as forcefully and radically as he wanted it. He regarded Fritsch, the Chief of Staff, and General Beck as obstacles in that respect, and, therefore, he represented his ideas as being necessary in the interest and defense of Germany.

Q. But do you recall a meeting in November at which he particularly discussed the expansion of his foreign policy, and requested that his statements be looked upon in the case of his death as his last will and testament?

A. He did not say that this should be his will in case of his death. I don't believe it, because he also told me in the Reichstag when he nominated Hess as the third in succession, that I would be free to take steps should I succeed him, as he was free to make his own decisions.

Q. But that is not what I am talking about at this time. I am asking whether you can't recall a meeting in November of 1937 at which the Fuehrer stated that what he said about the expansion of his foreign policy was what he wished to be considered as his last will and testament in case he died.

A. I only mentioned that because I don't believe that he said that, because as far as I remember, he never spoke about his last will in case of his death. About his own future plans he has spoken more often, but never about his last will.

Q. It is so written in the official documents.

A. What?

Q. It is recorded that such a meeting took place, and I am only trying to recall that meeting to your recollection.

A. I only understood in the question that if there has been something written down about the foreign policy, the future foreign policy.

Q. That is correct.

A. A written last will of the foreign policy was never laid down.

Q. The document is in our possession.

A. The Fuehrer never showed it to me.

Q. That is all for today. I want you to try to think, between now and tomorrow, whether you can't recall this meeting in November of 1937 at which the expansion of Germany's foreign policy was discussed among those whose names I have already given you.

A. As I stated before, there have been several conferences where foreign policy was mentioned. What the Fuehrer said as an overall picture, I know, but what he said on this particular date, I cannot recall. Austria, the Anschluss, Sudeten Germany, Danzig, the question of the Corridor, expansion to the East—he spoke about that frequently.

Q. This was a full and complete statement of the overall policy which was to be adopted from that time on.

A. But that is not so. It was the way of the Fuehrer to try to influence people to gather their strength and use it in a certain direction that he got enthusiastic and gave a bigger picture, an overall picture of a whole situation to impress, but it wasn't meant as a principle. The principle existed only in the question of Austria, Sudeten Germany, and the Corridor.

Q. Czechoslovakia?

A. No. That came as a surprise to all of us.

Q. That is not in accordance with the official documents either.

A. But I can say so, because at first only the question of the Sudeten Germans was a principle of foreign policy for him. The question of the remaining part of Czechoslovakia was deferred depending on solution of the Sudeten problem. When I say that it was a surprise to me and to most of us I mean that after the Munich Pact the occupation of Czechoslovakia was a surprise.

Testimony of Hermann Goering taken at Nurnberg, Germany, 28 August 1945, by Col. John H. Amen. Also present: Pfc. Herbert T. Baru, Interpreter; Nancy M. Shields, Reporter.

Hitler's 1937 Planning for Aggression

Q. Do you recall at one or the other of these meetings, the Fuehrer stating that Germany would have to decide upon three different cases or alternatives?*

A. I cannot recall exactly whether the question of three alternatives was brought up but it was, of course, the Fuehrer's duty in this close circle of his collaborators, military and political, to discuss all alternatives present for Germany.

Q. Do you recall that one of these cases was that from 1937 any change would be for the worse so far as Germany's existing situation was concerned? For example, that the rearming of the Army, Navy, and Air Force was practically concluded.

A. No. It was not finished by a long stretch, but he did say that at a certain time the other powers would catch up with the initial advantage Germany had in armament. In 1937 the German rearmament was not completed.

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* See document 386–PS, Vol. III, p. 295.

Q. But that relatively with the other countries, the German position would not improve as time went on?

A. No. He thought the situation would become more unfavorable to Germany as time went by. It was for the purpose of that that the Generals would speed their rearmament.

Q. And that the equipment of the armies was modern and might deteriorate as time went on?

A. Yes, that also.

Q. That the secrecy of special weapons might get out?

A. No new weapons in that sense worth mentioning existed in 1937. They were merely modern constructions of existing weapons and there were no new weapons in the sense of the secret weapons of later years.

Q. And that the enlistment of reserves would be limited to current recruiting age groups and an additional number from older, untrained groups would be no longer available as time went on?

A. Yes, this also was discussed.

Q. And all of these matters were stated by the Fuehrer at that meeting or at one or the other of these meetings?

A. Yes.

Q. Do you also recall his saying at or about 1937 that should Germany not act until 1943 to 1945, then being dependent on the absence of reserves, any year might bring about a food crisis for the countering of which Germany did not possess the necessary foreign currency?

A. Yes, the Fuehrer once spoke about it in very general terms. I don't remember if it was on this exact date. Also, it is not quite sure whether the years 1943 and 1945 were mentioned but I do remember that the Fuehrer said if the problem was not solved in the near future a crisis in food might develop.

Q. Do you also recall him saying this must be considered a weakness in the regime and he did consider it such?

A. Yes. The Fuehrer himself would have considered it a weakness in the regime.

Q. And that the world would anticipate action from Germany and would increase counter measures yearly?

A. I don't remember precisely but this is well within the trend of Hitler's thought.

Q. And that while other nations isolated themselves, Germany would be forced on the offensive?

A. It is not quite clear what is meant by "other nations isolating themselves."

Q. Withdrawing themselves from Germany?

A. Hitler never imagined a complete state of isolation. He always thought in terms of groups of nations.

Q. And do you recall his stating that in view of all these various factors that Germany could wait no longer to prepare for offensive war?

A. No. Hitler certainly did not say so because in 1937 the German Army was not sufficiently progressed. It was still on the ascendance and no immediate war was intended.

Q. I am talking about the speech that Hitler made, possibly not what he had in mind, but the speech.

A. He may have said "within the next years" but not as of 1937.

Q. But do you not recall that he stated in 1937 that on the one side were large armed German forces with the necessity for securing their upkeep, the aging of the Nazi movement and its leaders and on the other side the prospect of the lowering of the standard of living and a drop in the birth rate which left Germany no choice other than to act?

A. Certainly Hitler did not speak of any possible fall in the birth rate because at that time there was a steady increase in the birth rate.

Q. How about the rest of it?

A. He certainly did not refer to the aging of the movement, but possibly to his own personal age.

Q. Specifically, do you not recall the Fuehrer stating that if he was still living, it was his irrevocable decision to solve the German problem of space not later than 1943 to 1945?

A. No. Hitler did not mention any definite date but he did say it was his decision to solve the problem during the time of his own life. He may have referred to those years as a turning point from which time the equilibrium of power would be in disfavor of Germany.

Q. Does it not help you to remember if I suggest that he said the necessity for action before 1943 to 1945 must come under consideration in Cases 2 and 3 which I haven't yet questioned you about but will right away?

A. I don't remember that Hitler said anything with such precision but I would like to hear the cases so that I can remember.

Q. I have now given you Case 1. Here is Case 2. Should the social tensions in France lead to an internal political crisis of such dimensions that it absorbs the French Army and thus renders it incapable of employment in war against Germany, then the time for action against Czechoslovakia has come.

A. I do remember that Hitler spoke about internal crisis in France and said he was well aware such a crisis would naturally materially help his plans, but made no specific reference to Czechoslovakia but I remember that he spoke about a crisis in France.

Q. The documents and other witnesses are quite to the contrary.

A. But he certainly spoke about a crisis in France. I remember it very clearly.

Q. But if a crisis developed, then the time for action against Czechoslovakia had come?

A. Hitler said approximately that, if the interior crisis in France developed more, it would then be a moment for Germany to begin discussions on the questions which needed solution.

Q. But then action would be taken against Czechoslovakia?

A. It is possible that he said that also. It was one of the points in the program that the Sudetenland would have to be liberated.

Q. If the documents show that, you would not dispute it?

A. What, in particular?

Q. Action against Czechoslovakia, that is?

A. It is quite possible.

Q. Now Case 3. It would be equally possible to act against Czechoslovakia if France should be too tied up by war against another state that it cannot proceed against Germany.

A. Yes. That is one of the same suppositions.

Q. Do you not recall that the Fuehrer so stated?

A. Yes, it may well have been within the trends of his thought.

Q. And for the improvement of Germany's military and political position it must be their first aim in every case of entanglement by war to conquer Czechoslovakia and Austria simultaneously in order to remove any threat from the flanks in case of a possible advance from the west?

A. Yes, he said so.

Q. And that in the case of a conflict with France it would hardly be necessary to assume that Czechoslovakia would declare war on the same day as France?

A. I don't remember, but it is possible.

Q. And that Czechoslovakia's desire to participate in the war would increase proportionately to the degree to which Germany was being weakened and its actual participation could make itself felt by an attack on Silesia either towards the north or the west?

A. Yes, sir, as far as weakened is concerned, Hitler said it. Hitler always called Czechoslovakia "the aircraft carrier of the enemy" and considered that one of the most pertinent threats against Germany. He was of the opinion that whether there would be a war against the west or the east, Czechoslovakia would have to be eliminated first in the same moment.

Q. Did you not also hear him say that once Czechoslovakia was conquered and a mutual Germany-Hungary frontier was obtained, then a neutral attitude by Poland in a German-French conflict could more easily be relied upon?

A. Yes. I remember that Hitler said that.

Q. And also that Germany's agreements with Poland remain valid only as long as Germany's strength remains unshakeable and that should Germany have any set-backs then an attack by Poland against East Prussia, perhaps also Pomerania and Silesia, must be taken into account?

A. Yes.

Q. And that, assuming a development of the situation which would lead to a planned attack on Germany's part in 1943 or 1945, the behavior of France, England, Poland, and Russia would probably have to be judged as follows:

A. I will have to listen to what follows. I don't remember that Hitler referred to such precise dates.

Q. Do you not recall the Fuehrer stating that he personally believed that in all probability England and perhaps also France had already silently written off Czechoslovakia and that they had got used to the idea that this question would one day be cleaned up by Germany?

A. Yes. I don't recall precisely whether Hitler said that on November 10 but it was certainly the trend of thought.

Q. When I get through, I think you will probably remember that all these things were said at that one meeting.

A. These things have been stated repeatedly.

Q. And that the difficulties in the British Empire and the prospect of being entangled in another long-drawn-out European war were decisive factors in the non-participation of England in a war against Germany?

A. Yes, such thoughts were expressed.

Q. And that the British attitude would certainly not remain without influence on France's attitude then?

A. Yes. Hitler always considered France entirely dependent on the British attitude.

Q. And that an attack without British support was hardly probable, assuming that its offensive would stagnate along our western fortifications?

A. Yes.

Q. Without England's support it would also not be necessary to take into consideration a march by France through Belgium into Holland and this would also not have to be reckoned with by us in case of a conflict with France as in every case it would have as a consequence the enmity of Britain.

A. No, I don't remember that Hitler ever spoke of an isolated war against France. It was always his conception that a war with France would also be with Great Britain but it is possible that he made a general reference to such a possibility which, however, he didn't believe himself.

Q. Did you not hear him state this: Naturally, we should in every case have to bar the frontier during the operation of our attacks against Czechoslovakia and Austria?

A. Yes, but he didn't fear any attacks from Austria. The Czech frontier was more in his mind.

Q. It must be taken into consideration here that Czech defensive measures will increase in strength from year to year and the consolidation of the inside values of the Austrian Army will also be affected in the course of years.

A. I remember well that Hitler spoke of Czechoslovakia but not of Austria. That would be impossible, furthermore, because of the disintegration of the Austrian Army which was on the increase at that time and if Hitler said anything of the kind it was merely done to impress upon the gentlemen of the army the necessity for arming and he may have advanced arguments he didn't himself believe.

Q. Do you also recall him stating that although the population of Czechoslovakia is not a thin one, the embodiment of Czechoslovakia and Austria would nevertheless constitute the conquest of food for five to six million people on the basis that a compulsory emigration of two million people from Czechoslovakia and one million from Austria could be carried out?

A. That I believe is utter nonsense, because everybody knew that Austria needs imports of foods and that nothing grew on the Austrian mountains. It must be an error.

Q. The question is, whether or not the Fuehrer said it.

A. The only thing said about evacuation that I remember is that three or four hundred thousand Czechs residing in Vienna and Linz could be sent to Czechoslovakia. That was the only evacuation referred to. But again, about the gain of food, that is utter nonsense because Czechoslovakia may be self-sufficient and able to export a little but Austria has always been a country needing imports of food.

Q. Do you recall the Fuehrer saying that the annexation of these states to Germany, militarily and politically, would constitute a considerable relief owing to shorter and better frontiers, the freeing of fighting personnel for other purposes and the prospect of reconstituting new armies up to a strength of about 12 Divisions, representing a new division per one million population?

A. Yes, on the whole. Hitler said the frontier and the situation in Germany would be materially improved and he figured a number of new divisions from Austria and Sudetenland. It may be he arrived at a number of twelve. I think that is probably correct.

Q. Do you recall the Fuehrer saying no opposition to the removal of Czechoslovakia was expected on the part of Italy; however, it cannot be judged today what would be her attitude to the Czech question since that would depend on whether the Duce were alive or not?

A. Yes, those were his thoughts.

Q. And that is what he said?

A. Yes, very well. He said that repeatedly. I cannot pin down exactly that he said it at that meeting.

Q. Do you also recall his stating that the measure, the speed of our action would decide Poland's attitude? Poland would have little inclination to enter the war against a victorious Germany with Russia in its rear?

A. Yes.

Q. Do you also recall his stating that military participation by Russia must be countered by the speed of our operations? It is a question whether this need be taken into consideration at all in view of Japan's attitude?

A. It is possible.

Q. Do you not recall his having said that at any time?

A. Yes. Such things were said repeatedly.

Q. And that, should Case 2 occur, which you remember was to paralyze France by civil war, then the situation should be utilized at any time for operations against Czechoslovakia as Germany's most dangerous enemy would be eliminated?

A. Yes, he has said so before.

Q. And also that the Fuehrer sees Case 3 looming near? It could develop from the existing tension in the Mediterranean. Should it occur, he has decided to make use of it at any time, perhaps even as early as 1938?

A. I want to know again what Case 3 is.

Q. Case 3 is that it would be equally possible to act against Czechoslovakia if France should be so tied up in a war against another state that it could not proceed against Germany.

A. Yes. He said that for whatever reason France would be incapable of acting, it would then be the moment for settling the Austrian and Czechoslovakian question.

Q. And following the recent experience of the course of events in the war in Spain, the Fuehrer did not see an early end to the hostilities there?

A. That is correct.

Q. And taking into consideration the time required for past offensives by Franco, a further three years' duration of the war is within the bounds of possibility?

A. I cannot recall precisely Hitler speaking of three years, but I remember he said it would go on for much longer.

Q. And on the other hand, from Germany's point of view, a 100 percent victory for Franco is not desirable? We are more interested in the continuation of the war and the preservation of the tensions in the Mediterranean?

A. First of all, I do not recall that Hitler said anything of that kind at that particular time. Such opinions are in contradiction to Hitler's opinions. Germany was engaged in the war in Spain and had no interest to be engaged too long in such a war, and also it had to be feared that incidents might develop out of that engagement in the Spanish war which might lead to conflicts which at that time were not intended and not helpful to the freedom of action.

Q. Is that something that Hitler might have said for the benefit of the military?

A. It is possible that he said some such thing because he often used arguments which were supporting the argument of the moment and not in the general trend of his thought. I do not recall the extremes, but I remember very well the general trend of thought.

Q. Do you also remember the Fuehrer stating that should Franco be in sole possession of the Spanish peninsula, it would mean the end of the Italian intervention and the presence of Italy on the Balearic Isles?

A. Yes, I remember that such things were said.

Q. Do you also remember his stating: However, a solidification of Italian possession of the Balearic Isles cannot be tolerated either by France or England and could lead to a war by France and England against Italy in which Spain, if in Franco's hands, could participate on the side of Italy's enemies?

A. Yes, it was true that Hitler said the Italians should not use their intervention in the Spanish war to establish themselves on the Balearic Isles because that would lead to conflict with England and with Franco, who could not tolerate their presence there.

Q. And that a subjugation of Italy in such a war appeared very unlikely?

A. That is not clear. A subjugation of Italy in what war?

Q. The war by France and England against Italy?

A. Whatever over-estimation of Italy may have been the case, I don't believe that! Hitler was sure that France by herself or England by herself could quite certainly defeat Italy and even Franco by himself might defeat Italy.

Q. Did you hear Hitler say that Italy's military strategy would be to remain on the defensive, and carry out operations against France from Libya against North African colonial possessions?

A. I don't recall precisely, and again, I must say that I don't recall certain observations of Hitler to support a momentary theory. It may well have been that Hitler said something in theory that he would do, if he were the military commander of Italy he would have such-and-such a plan.

Q. If the documents show that Hitler said that, you would not dispute it?

A. No. I think it is quite possible but not in the sense of speaking of Italian policy but rather that, if Hitler were in charge of the Italian affairs, he would behave in such a manner.

Q. That is the manner in which the Fuehrer often spoke, is it not?

A. Yes.

Q. Do you also recall the Fuehrer speaking about Italy and stating: As a landing of French and British troops on the Italian coast can be discounted and as a French offensive via the Alps to Upper Italy would be extremely difficult and would probably stagnate before the strong Italian fortifications, French lines of communication by the Italian fleet will to a great extent paralyze the transport of fighting personnel from Africa to France, so that at its frontiers with Italy and Germany France will have at its disposal solely the metropolitan fighting forces?

A. This was the opinion in 1937 but in 1939 when I visited the fortifications on the Italian-French frontier, my opinion changed.

Q. But you do recall his making statements of that kind on frequent occasions?

A. No, those things weren't said frequently. He may have said it once and again, Hitler transposed himself into being the military commander of Italy and pointed out what he would do in such a position.

Q. Doesn't all this help you to remember that all these things were said by the Fuehrer on this occasion?

A. I cannot pin it down but I have no doubt it is possible. Such things were said so often and in so many circles and when the Fuehrer was taking walks with me alone but it is possible he said it. I cannot pin it down. I will not dispute it because it is entirely possible that Hitler said that, only certain points may have been misinterpreted when they were copied down at the time.

Q. Do you recall the Fuehrer saying that if Germany profits from the war by disposing of the Czechoslovakian and Austrian questions, the probability must be presumed that England, being at war with Italy, would decide not to commence operations against Germany and that without British support a warlike action by France against Germany is not to be anticipated?

A. Very surely, sir.

Q. Do you also recall him stating: The date of our attack on Czechoslovakia and Austria must be made dependent on the course of the Italian-English-French war and would not be simultaneous with the commencement of military agreements with Italy but of full independence and, by exploiting this unique favorable opportunity, he wishes to begin to carry out operations against Czechoslovakia? The attack on Czechoslovakia would have to take place with the speed of lightning?

A. In this case Hitler may have spoken of the entirely unlikely case that Italy would be in an independent war against other powers but all that amounts to the fact that Hitler said the Czechoslovakian and Austrian problem must be solved at the time when other powers were involved in other wars. It revolves around that point.

Q. Do you also recall the Fuehrer saying that Blomberg and Fritsch repeatedly pointed out that England and France must not appear as enemies and they stated the war with Italy would to such an extent bind the enemy that it would not be in a position to commence operations on our own frontier with superior forces?

A. Certainly the gentlemen of the army were so afraid of France that they certainly said it.

Q. Also, that Fritsch estimated the French forces which would be presumably employed by the French and Italian frontier, to be in the region of 20 divisions, so that a strong superiority would still remain on our western frontier?

A. I don't recall precisely the 20 divisions but Fritsch said repeatedly very much was to be feared from France.

Q. Do you recall the Fuehrer saying that the French would, according to German reasoning, attempt to advance into the Rhineland?

A. Yes, if it was according to the Generals, the French would have advanced into Berlin.

Q. That we should consider the lead the French had in mobilization and quite apart from the very small value of our own fortifications the four motorized divisions laid down for the west would be more or less incapable of movement?

A. That is absolutely right. That was the purpose of the whole meeting because the general staff had no confidence in their armies and no confidence in their fortifications but were in fear of France.

Q. But you do now recall that all this was said at that one meeting?

A. Such meetings occurred three or four times; once, before they left the League of Nations; before they published the rearmament laws, and in all such issues such meetings were called, and that on every such occasion the gentlemen of the army were so afraid that it is quite possible that Hitler said again all the things said at that meeting.

Q. Do you also recall the Fuehrer saying that in regard to our offensive in south-easterly direction von Blomberg drew special attention to the Czech fortifications, the building of which had assumed the character of the Maginot Line and which would present extreme difficulties to our attack?

A. I remember that well, and the army did nothing else but draw attention to the German weakness and the strength of her enemies. Again, another such meeting was called when they entered the Rhine.

Q. I will question you about that later. Do you also recall the Fuehrer stating that Von Fritsch said it was the purpose of the study he had laid on for this winter to investigate the possibility and carrying out offensives against Czechoslovakia with special consideration of the conquest of the Czech fortifications? That the general also stated that owing to prevailing conditions he would have to relinquish his leave abroad which was to begin on 10 November?

A. Yes, it was the duty of von Fritsch to prepare such studies.

Q. Do you also recall Fritsch stating that this intention was countermanded by the Fuehrer who gave as his reason that the possibility of the conflict was not to be regarded as being so imminent?

A. Only in the sense that the general should not put this study above the level of normal studies of the General Staff.

Q. Do you also recall the Fuehrer stating in reply to a remark by the Minister of Foreign Affairs that the Italian-French-English conflict was not so near as the Fuehrer appeared to assume, the Fuehrer stated that the date which appeared to him to be a possibility was the summer of 1938?

A. No, I don't remember that and although the Fuehrer may have spoken in general terms about a possible Italian-English-French conflict, he didn't really believe such a thing would occur.

Q. But if the documents show the Fuehrer said that in a speech you would not dispute it?

A. Then I would merely have to add that the Fuehrer said something that in his inner soul he did not believe.

Q. In reply to statements by von Blomberg and Fritsch regarding the English and French attitude, the Fuehrer repeated his previous statements and said he was convinced of England's non-participation and consequently he did not believe there would be military action by France against Germany?

A. About the non-participation of England—in what case did the Fuehrer speak of non-participation?

Q. That he believed that Britain would not participate under the circumstances as the Fuehrer foresaw them?

A. Yes, it is correct it has always been his opinion that France would not act independently of England.

Q. Assuming that neither England nor France would take military action at that time?

A. Yes. Why should they?

Q. Do you recall the Fuehrer stating: Should the Mediterranean conflict already mentioned lead to a general mobilization in Europe then we should have to commence operations against Czechoslovakia immediately? If, however, the powers not participating the war declared themselves disinterested, then Germany would, for the time being, have to side with this attitude?

A. Yes, that is contained in the general trend of thought.

Q. By and large, you can state that everything that I have repeated to you as being stated by the Fuehrer was so stated by him at one or more of these meetings in 1937?

A. On the whole this may well have been said. However, it is eight years ago and I do not remember whether it was on 10 November. Some slight errors may have been made in copying down things which were said.

Goering's Part in the Obersalzberg Speech

Q. Do you recall a speech at which you were present which was made by the Fuehrer at Obersalzberg on 22 August 1939?*

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* See document 798–PS, Vol. III, p. 581; 1014–PS, Vol. III, p. 665; L–3, Vol. VII, p. 752.

A. To whom was the address directed?

Q. To the Commanding Generals and Supreme Commanders.

A. Yes.

Q. Do you remember that was the speech where you jumped up on a table after the speech and led a demonstration?

A. I dispute the fact that I stood on a table but as the ranking officer at the end of all such events I assured the Fuehrer of our loyalty to the cause.

Q. I said that to remind you of the speech?

A. Yes, I remember it but I did not stand on the table.

Q. What did you do?

A. It was the custom in such meetings where Hitler addressed the commanding generals and high officers (which wasn't too frequent) that at the end of such a meeting I would thank the Fuehrer for his speech and secondly to say the speech had found a warm echo in our hearts and to assure him of our support.

Testimony of Hermann Goering taken at Nurnberg, Germany, 29 August 1945, 1430-1640, by Col. John H. Amen. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; S/Sgt. William A. Weigel, Reporter.

Planning the Invasion of Poland

Q. Well, doesn't what I have read to you help you, then, to remember what he actually did say in the speech on that day [22 August 1939?*

A. As far as I can remember he gave expression on this date to his determination to solve the question of the Polish Corridor, and it is quite possible that armed conflict might result from this; and in this connection he discussed with the generals the possibility and eventualities of an armed conflict, be it with Poland alone or also with the western powers, and that he tried—I don't know exactly how to express it but I think the word "Vergleich" expresses it; that is literally translated an equitable solution—for an equitable solution, and that it was his belief that the attitude of Russia would prevent the western powers from entering into armed conflict with him. He elaborated on the two cases, be it war against Poland alone or be it war against Poland and the western powers, at that meeting. He mentioned to the generals his own views of what might happen in such a conflict, and he insisted that it was necessary to complete the campaign in Poland as quickly and as effectively as possible in case of intervention by the western powers. Whether he said this actually in his speech or mentioned it afterwards in the inner circle of his intimates I do not know, but he said that he hoped that with a quick completion of the Polish campaign the Western Powers at any rate would be ready to talk peace with him.

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* See footnote p. 1102.

He further reasoned that he would make no air attacks against the west, but would use the whole force of the German Luftwaffe against Poland. It was furthermore his opinion that German Naval forces should not engage in active warfare with either French or British Naval forces. He was of the opinion that a quick completion of the Polish campaign, even in the case that the western powers should stick by their pledge to come to the aid of Poland, would convince them that it was better to make peace, especially after seeing that Germany and Russia had come to an accord over the matter of Poland. He also elaborated in a general way about such things as we mentioned here yesterday.

Q. Is it not fair to say, then, that this was the occasion upon which the Fuehrer announced to the generals his decision for an immediate attack upon Poland?

A. It was his habit to address his officers personally before each campaign. Most of the officers present there must have known of the fact that the Polish campaign was coming through orders that they had received or handled, but no doubt a few of them learned of the coming campaign in this way.

Q. Also is it not fair to say that it was in the nature of a pep talk for the impending attack upon Poland?

A. Yes, it was a pep talk in case the campaign was coming.

Q. And the campaign did come almost immediately thereafter, did it not?

A. Yes, but I wish to remind you of the fact that in September or just before September there were still all kinds of diplomatic activities going on which had as their object the peaceful solution of the problem of the Polish Corridor and other questions related to that. I admit the Fuehrer was sceptical from the first because he did not assume that the Poles would enter into any compromises regarding the question of the Polish Corridor or Danzig. We knew that Foreign Minister Beck of Poland was willing to enter into compromises, but we also knew that the military people of Poland were not willing to do so because they regarded Germany as very much weaker than she was in actuality.

I want to make another addition. I wish to add that yesterday we talked about my jumping on a table after the speech to which you have referred so many times. I want you to know that the speech was made in the great hall of Hitler's private house and I did not have the habit of jumping on tables in private homes.

Also this would have been an attitude completely inconsistent with that of a German officer.

Q. Well, the fact is, however, that as you explained in conformity with custom you led the applause after the speech?

A. Yes, but not on the table.

Q. And it was an address which was enthusiastically received by you and the other persons present?

A. Enthusiastic? Well, yes, it was perhaps enthusiastic in the sense that the officers who were present there applauded his speech and then declared emphatically that they would do their duty.

Q. When the negotiations of the Polish foreign minister in London brought about the Anglo-Polish treaty at the end of March or beginning of April 1939, was it not fairly obvious that a peaceful solution was impossible?

A. Yes, it seemed impossible after my convictions, but not according to the convictions of the Fuehrer. When it was mentioned to the Fuehrer that England had given her guarantee to Poland, he said that England was also guaranteeing Rumania, but then when the Russians took Bessarabia nothing happened, and this made a big impression on him. I made a mistake here. At this time Poland only had the promise of a guarantee. The guarantee itself was only given shortly before the beginning of the war. On the day when England gave her official guarantee to Poland the Fuehrer called me on the telephone and told me that he had stopped the planned invasion of Poland. I asked him whether this was just temporary or for good. He said, "No, I will have to see whether we can eliminate British intervention." So then I asked him, "Do you think that it will be any different within four or five days?"

At this same time—I don't know whether you know about that, Colonel—I was in communication with Lord Halifax through a special courier outside the regular diplomatic channels to do everything to stop war with England. After the guarantee I held an English declaration of war inevitable. I already told him in the Spring of 1939 after occupying Czechoslovakia, I told him that from now on if he tried to solve the Polish question he would have to count on the enmity of England. 1939, that is after the Protectorate.

Q. Is it not a fact that preparations for the campaign against Poland were originally supposed to have been completed by the end of August 1939?

A. Yes.

Q. And that the final issuance of the order for the campaign against Poland came sometime between the 15th and 20th of August 1939 after the signing of the treaty with Soviet Russia?

A. Yes, that is true.

Q. Is it not also a fact that the start of the campaign was ordered for 25 August, but on 24 August in the afternoon it was postponed until 1 September in order to await the results of the new diplomatic maneuvers with the English ambassador?

A. Yes.

Plans for Occupation of Denmark and Norway

Q. Is it not a fact that the decision to occupy Denmark resulted from consideration of the occupation of Norway and was done to shorten the lines of communication overseas and to build a secure communication bridgehead to Norway?

A. Yes. First of all that, and then as the second reason to prevent England making a foothold in Jutland between Norway and Germany.

Q. In Norway did you try to negotiate with the government immediately after the entrance of German troops?

A. Yes.

Q. At the end of December or early in January 1940, you expected English landings on the Norwegian coast?

A. From then on we worried all the time about the possibility of English landings in Norway.

Q. Was the reason for the postponement until 9 April because of the fact that the Baltic Sea was frozen?

A. Yes, the situation as far as the weather was concerned. The thing would have been put off still further but we had definite proof that England was getting ready to make landings in Norway.

Q. But he had planned it for the earliest possible date?

A. Yes, to the date best suited to the weather. This particular date was very bad for the air force because Norway had only few airports and those north of Oslo were still under snow at that time.

Q. Was there any over-all plan other than to occupy the most important harbors and airports by surprise from both air and sea?

A. Yes. The original plan called only for the occupation of the most important harbors and airports and there weren't even enough forces to occupy one point, on which I in particular had insisted, Andalsnes, and that exactly proved to be the point where later on the English landed.

Q. Was it planned that heavy weapons should precede the landing?

A. Yes. That is only at Narvik. There were several coal and ore boats which we were going to use for Narvik. They were loaded with cannon, but they were stopped at Haugesund.

Invasion Plans for Russia and the Balkans

Q. We will take the Balkans for a moment. Is it not a fact that the decision to take part in the Balkans occurred only when the Italians became impotent in Greece?

A. Not right at that time because the attack of Italy against Greece was done without our knowledge and the Fuehrer tried to stop that by flying to see the Duce but he was unfortunately four hours late.

Q. The Fuehrer wanted to occupy Crete rather than the Greek mainland, did he not?

A. That was very much later. Only when the putsch in Belgrade forced us to act did we become interested in that.

Q. Why was the Fuehrer unable to stop the Italian operations toward Greece?

A. I can say that exactly. The Fuehrer coming back from a conference with Franco on the Franco-Spanish border heard about the Duce having such a plan and ordered his train to proceed to Florence at once to meet the Duce there. As far as we know, and I can only say as far as we know, the proposed invasion of Greece by the Italians was not meant to be done on this date, but the Italians realized that the Fuehrer would very strongly object to such an invasion. They ordered the invasion to start at six o'clock the next morning in spite of bad weather. The Fuehrer got there at ten o'clock and he wanted to make remonstrations with the Duce. The Duce told him, "It has already happened, but there is nothing to worry about because we will be done in a few days."

Q. That was presumably done for political reasons on the part of the Italians?

A. With the Italians one never knows whether they are reasons of policy or prestige. The Fuehrer did not want this because of Turkey.

Q. And I presume that the Germans wanted to free their troops as fast as possible for the Russian campaign?

A. The invasion of Russia only took shape in the spring of 1941 at the first, and when he decided, in order to prevent a Russian attack on him, he moved troops in the direction of Rumania, the putsch occurred in Belgrade and these troops were turned about at once to settle the matter in Jugoslavia; since the English had landed in Greece and only when the fateful situation that had developed for the Italian army by encirclement by the Greeks and also the matter of the Yugoslavs had come to a head, the Fuehrer decided for intervention in Greece. There also may have been the reason that he wanted to please Bulgaria, who was then a friend, by occupying Greek territory. The Fuehrer was very unsympathetic towards war with Greece because there was nothing we could gain.

Q. We will take Crete for a moment. When did the Fuehrer come back to his original idea of occupying Crete? Was it toward the close of the Greek campaign?

A. The Greek campaign was also already finished when Hitler ordered me to occupy Crete at very short notice. This was done quite independently of the Greek campaign, as he wanted to use Crete as a base against the Suez Canal and it also would have been a possible base of the English facing our positions in the Balkans; another reason was that Crete should prevent a possible connection between the fleets of the Black Sea and those of the Mediterranean; that is the Russian and the British fleets.

Q. Was it a part of the purpose to seal off the Aegean Sea and get a bridgehead on the way to North Africa?

A. Yes; as far as blocking off the Aegean Sea goes, that is true. At that time everything was being prepared for the invasion of Russia and nobody thought of going into Africa, but Crete was to be very useful in disturbing traffic for Suez.

Q. Were the preparations for the Crete campaign entirely the responsibility of the Luftwaffe?

A. In the main, but the fleet also had some responsibility and the army, but in the main the Luftwaffe was responsible, that is, with the parachutist division.

Q. What general of the Luftwaffe was in charge?

A. In order to be absolutely sure that the thing would work, I sent my chief of staff, General Jeschonneck down there. The man responsible for Air was General Richthofen.

Q. We will take Russia for a moment. Was it the Fuehrer's original intention to start the Russian Campaign in the fall of 1940?

A. No. Nobody talked about Russia then. No; there was no talk about it at this time but in November 1940 an order was given to prepare for the security of the eastern frontiers. That was in case Russia should assault them.

Q. Is it not a fact that in July 1940 Jodl told his staff officers at Reichenhofen that the Fuehrer had decided to eliminate the threat of Bolshevism?

A. I don't know anything about that. The thing was that in September and October 1940 the Gibraltar campaign was very much on our minds. The first time that I thought about the coming danger of war with Russia was in November 1940 when I was given the preparatory order to secure the borders more than they had been secured before because large attack formations had been observed in Russia. The second thought I had about this was in February 1941 [sic] at the time of the visit of Molotov in Berlin. I watched the attitude of the Fuehrer and that made me think along those lines. That is, the attitude of the Fuehrer towards the demands of Molotov. In the beginning of March Hitler told me that he was determined to prevent a Russian attack in an unfortunate moment for Germany and to act.

Q. At any event, the Fuehrer stated at some point that he proposed to start operations in the spring of 1941 as soon as the weather permitted, did he not?

A. No. I have never heard of that. I think it is impossible because the time was too short. He would not have been able to concentrate his forces in such a short time. Perhaps you are a little mixed up on this because it is true that the attack against Russia would have happened earlier if the Jugoslavia affair hadn't come.

Q. Well, the first written orders, Barbarossa, so-called, were released in the late fall of '41; is that not correct?

A. For Russia. We were already at war in the autumn of 1941.

Q. '40.

A. Those were not orders of attack; they were orders in case the Russians attacked us. We only had very weak forces in the east at that time, as far as I remember only eight divisions. It is possible that Hitler may have spoken about that with his more intimate military advisors, such as Jodl or Keitel, towards the end of 1940, but I don't know that. The first time I ever heard of that was after the visit of Molotov in Berlin when the Fuehrer ordered me to come to him at Berchtesgaden and in a discussion of two hours showed me his reasons for waging a preventative war against Russia.

Q. But doubtless the Barbarossa orders were preceded by discussions between the Fuehrer and his military commanders?

A. Surely.

Q. Is it a fact that the necessity to intervene in the Balkans caused the delay of the opening of the Russian campaign from May '41 to the latter part of June?

A. Yes, I said that.

Q. And is it a fact that the only final cause for the launching of the Russian campaign was found in matters of exchange of goods as provided in the German-Russian Treaty?

A. No, but through the great preparation for an attack Russia made in her newly won Polish area. I can tell the Colonel all those reasons exactly in this connection.

The reasons for the preventative measures that the Fuehrer took against Russia were the following: The very strong concentration of Russian forces at the German frontier; second, the conspicuous massing of air forces in the newly won area of Poland; third, the factories where the Russian tanks and planes were made, were for the first time shown to Germans and one could see the enormous production and possibilities for production that they had; fourth, a fear that the Russians would increase their economic pressure against Germany by failing to deliver one thing after the other; but the main reason—and I am coming to that now—was the demands that Molotov made in Berlin. Russia wanted to start the war against Finland again in order to occupy all of Finland. Russia also demanded a free hand in Rumania and in the Balkans with respect also to the Dardenelles. In a talk between Molotov and Ribbentrop even bases at the exit of the Baltic Sea were mentioned, and the Fuehrer was afraid that the Russians would not go south from Rumania in the direction of the Dardenelles but that they would move their weight into the southern German flank. He was also afraid that the campaign for the reopening of the campaign against Finland was only an excuse to outflank Germany from the north.

Those were the reasons that made the Fuehrer certain that Russia was going to attack Germany, especially when German forces were going to be committed again in the West through an invasion or something of that nature, because at this time he had the free use of the Army and he was anxious to eliminate this danger as quickly as possible. To this must be added that we had reports from three Russian generals about a talk that Stalin had held in front of his generals in which he said that the treaty with Germany was only a curtain behind which things could be manipulated. Those were the reasons.

Q. Did you personally agree with those reasons?

A. I asked the Fuehrer for permission to return again in the evening in order to state my opinion and then in a long elaboration I voiced my objections to which he listened quietly. I thought that my reasons were carrying a lot of weight. The way I looked at it should Russia again go to war with Finland and expand to the south, it would get into conflict with England, because it was headed for the Dardenelles. I also called the fact to his attention that we already were at war with one of the great world powers, namely, the British Empire, and that without a doubt America, another great world power, would enter the conflict and that it would not be wise to start a conflict with Russia, the third major world power, because that would go beyond our powers. I had no doubts that we would destroy the Russian Army relatively fast. I even held the conviction that this could be done more quickly than the Fuehrer himself believed, but I asked him how he ever expected to get peace with this huge space on his hands. I also told him that the security of this huge space and the security of the extended lines of communication against attacks which were sure to develop from the inside of Asia would take an enormous power to hold, which also was beyond our means. To this was added the fact that my Luftwaffe which at this time was engaged in successful attack upon England would have been stopped in the middle of that attack in order to be committed for the new venture. The Fuehrer thanked me for giving him my reasons and for acting as the agent of the Devil as he put it, but he held the danger was so singular that he decided to go ahead as planned, and he got me to help him as always.

Testimony of Hermann Goering, taken at Nurnberg, Germany, 30 August, 1945, 1030-1145, by Colonel John H. Amen, IGD, OUSCC. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; S/Sgt. William A. Weigel, Reporter.

Responsibility for Armament Program

Q. By whom was the annual program of armament requirements prepared?

A. The Fuehrer, together with the Supreme Commanders of the army and the Minister of War, fixed that; that is, army, navy and air force, and the Minister of War.

Q. How about OKW?

A. The OKW was only founded after 1938 when Minister of War von Blomberg resigned. Then from 1938 on the OKW took its place there instead of the Minister of War.

Q. Represented by Jodl?

A. No. Keitel represented—that is, as far as the questions of armament are concerned.

Q. And were those questions considered in discussions between these individuals?

A. No, there were rather few discussions. The Fuehrer gave the outlines and only when there were differences about the requirements of raw materials were there discussions. And Keitel usually reported these differences to the Fuehrer.

Q. Before Keitel participated in those discussions, I presume that Blomberg did?

A. Yes.

Q. During what years did Blomberg do that?

A. From the year 1933 until February 1938.

Q. And then Keitel?

A. Yes. Keitel was not directly responsible. Blomberg had been over the three Commanders of the branches of the service and Keitel was not. Now Hitler took the responsibility and made the decisions.

Q. Then in 1942 or shortly thereafter Speer took over?

A. Yes, in the big outlines. It was done in such a manner that Speer was responsible for the requirements in the big outlines. But as far as tactical and technical matters were concerned, the three Commanders of the three branches of service were responsible.

Q. Well, was there closer coordination under the Speer set-up than under the previous arrangement?

A. Coordination was closer with Speer than it had been before.

Q. And what was the set-up under Speer?

A. At first, Speer only took over the office for weapons of the army; then of the navy; and very late also of the air force, in 1944, and he was responsible for all production of war materials, and the three branches of the armed forces were only responsible for the development of tactical and technical details. But the Fuehrer himself very strongly influenced armament in collaboration with Speer.

Q. Then did the Fuehrer approve the final planning?

A. Yes. The Fuehrer even decided upon the plan. Very often he decided upon the number and type of guns, rifles and machine guns to be produced. He, moreover, checked all plans very conscientiously. Three days would hardly have passed without him seeing either Speer or Saur, who then took Speer's place to talk about these things.

Q. And when the plan had been approved by the Fuehrer, was it then announced by Jodl as the Fuehrer's order?

A. That may have happened upon certain occasions. Usually, though, he held Speer directly responsible for that. It is quite possible, however, that in the time between the resignation of von

Blomberg and the coming of Speer the Fuehrer may have handled these matters through Jodl.

Q. About when did Speer take over?

A. Todt was already in charge of it before Speer. Todt was only responsible for the armament of the army. That must have been in 1941, referring to Todt.

Q. Well, now, before Speer took over, whose responsibility was it to see that the Fuehrer's orders with respect to armament were executed?

A. For the air force it was my responsibility. For the navy, it was Raeder's and later, Doenitz's responsibility. For the army, Keitel was responsible.

Q. Where did the word "Blitzkrieg" come from?

A. The word "Blitzkrieg" came from England for the first time. The impression that our swift advances made on the English may have caused them to coin the word. And they also used to call our air attacks on England "Blitz."

Q. Referring to armament again, to what parts of the armament did the Fuehrer pay particular interest?

A. His main interest was always in the navy [sic]. He had great knowledge in these matters. The main thing was the army. He only mixed in affairs of the Luftwaffe in 1944.

Q. Apparently in the beginning he had little or no interest in tanks?

A. Yes, tanks especially. He had the habit of doing those things himself. He was especially interested in ships, tanks, and guns. It is his merit that we got the heavy tanks. He asked for this in opposition to all interests in the army.

Q. But prior to the Polish campaign little importance appears to have been attached to tanks. Is that correct?

A. Yes, the Fuehrer recognized the importance of tanks from the first, and he built up his whole plan of campaign in Poland and France on the theory of using tanks.

Q. At approximately what date did the Luftwaffe start to prepare for an attack upon England?

A. Do you mean during the war?

Q. Yes.

A. After the Polish campaign. On the day of the English declaration of war, I personally wanted to attack Scapa Flow, but the Fuehrer did not permit this.

Q. How much of an increase was made in the Luftwaffe following the Polish campaign?

A. The air force was not especially increased after the Polish campaign, but it was increased as production became available.

I wish to correct myself here; I made a slip. The actual air attack against England was only started on the 6th of September, or possibly 7th of September, 1940. All the previous attacks were only on a small scale.

Q. Well, then, didn't the major development of the Luftwaffe take place in 1939?

A. No. That already took place before that with all available means. Of course, everything increased from year to year, that is, production of planes, and so on.

Q. Well, in your opinion, when was the maximum strength of the Luftwaffe reached?

A. Maximum strength in 1942. And as far as fighter planes are concerned, 1944 or 1945; that is, the end of 1944 and the beginning of 1945.

Hitler Discounts Possibility of America Entering War

Q. I am now going to take up certain excerpts from some of the supplemental memoranda relating to the Green papers.*

A. Yes.

Q. [Reading] "It is not expected that other states will intervene against Germany."

A. Yes, that is right.

Q. And was that your opinion also?

A. No. I have always told the Fuehrer, and even in front of a witness, that it was my belief that if England would be drawn into a war with Germany, sooner or later America would come to her assistance—unless things were going very well for England right from the beginning.

Q. But the Fuehrer did not agree?

A. No. Strangely enough, the Fuehrer held the opinion that America would not enter the war under any condition. He said that America had had such a bad experience in 1918 that America would not participate in a second European conflict unless America itself was touched. He also overestimated considerably the influence of the so-called American isolationists.

Q. Was that opinion based upon advice and information which he received or merely an offhand opinion, so to speak?

A. The first part—I mean the part about the bad experience—was based upon a conversation he once had with Lloyd George. This talk on the whole produced in him a completely false opinion of the English and American attitudes. As far as the American isolationists are concerned, I do not know exactly, but I assume that he received his information in the normal manner.

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* Fall Gruen—The plan to invade Czechoslovakia. See document 388-PS, Vol. III, p. 305.

Testimony of Hermann Goering, taken at Nurnberg, Germany, 13 September 1945, 1111-1205, by Col. John H. Amen. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; S/Sgt. Horace M. Levy, Court Reporter.

Hitler's Role as Strategist in the West

Q. I ask to have this photostatic copy of "Memorandum and Directive for Conduct of War in the West" marked for identification as Exhibit A, 13 September 1945 (Goering).*

Do you recall whether the original of this document, or the copies which were distributed, contained the Fuehrer's signature?

A. Yes. All of them.

Q. Now, what were the other principal departures from the plan, as outlined in the memorandum?

A. The principal alteration and departure from this plan, such as is outlined in this memorandum, was simply that we used only infantry divisions in the north. We concentrated the armored divisions in the south, as far as I know, the armored divisions were reinforced until they finally were ten in May.

Q. Were there any departures and changes, so far as the plans outlined for the Luftwaffe were concerned?

A. Yes. There were alterations. As I outlined the other day, in the original plan the main effort of the air force was to be made in the occupation of the Belgian National Redoubt at Ghent by paratroops. That was altered by an occupation of Fort Eben-Emael, and the bridges of the Albert Canal, and the Dutch bridges. Also, by the alterations in the general plan of operations, the center of gravity of operations for the Air Forces was shifted from the north to the south, that is, the breakthrough at Sedan.

Q. Were there any other principal departures from the plans, as outlined in the memorandum?

A. No. The principal plan, which argued for not stopping in front of fortified places, or stopping for towns, but argued for encircling the largest possible element of the enemy, was kept.

Q. How many other similar directives for conduct of the war in the West were issued by the Fuehrer?

A. Does the Colonel mean before the war started in the West?

Q. Yes.

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*Document L–52, Vol. VII, p. 800.

A. Well, there is this thing, and you have to be sure and recognize the fact that this is a memorandum and not a directive. After that, I believe there were one or two directives from the Fuehrer, which were a little more definite in distributing tasks and missions, and then later when the whole plan had to be altered, there again were one or two, but I don't know exactly how many there were.

Q. So that this memorandum or "outline," as you call it, was implemented by subsequent more specific directives, is that so?

A. Yes. That is right. This memorandum here did not give any details whatever. It just stated the principle of the thing, and it formed the spine for any further directives and orders to be given.

Q. And the subsequent directives altered this outline in the various respects, which you have already explained, and went into further detail as to each procedure?

A. Yes.

Q. Was there more than one such specific directive? In other words, were all of the matters referred to in this outline covered in one directive or in several?

A. No. There was more than one. As far as I remember, there were a few of them. Just to give you an example how this was handled: Say for instance that the first directive explained and ordered all these strategic measures to be taken. Then possibly, the second directive would lay down all principles to be used in replacements of losses in the delivering of ammunition and so on; and then there was one covering each one of these subjects. Then after the three Supreme Commanders, who are mentioned on the first page of the document, received the original memorandum, they had to prepare their plans and submit their plans to the Fuehrer for approval. Then he would coordinate those plans, and maybe there would be another directive which in effect would state what coordination and what departures had taken place. Then after the general plan of operations was fixed by such directives, the Fuehrer would issue directives to the commanders of the actual armies in the field, and also to the commanders of the different air forces in the field, and that, in the presence of the supreme commanders, he might even explain to them their special tasks in their sectors.

Q. Did he personally correlate these plans?

A. Yes. These are purely his personal plans, I mean, the attack against the West.

Q. With or without consultations with the persons on this dis tribution list?

A. With consultation, of course; but I want to say the principal thoughts and the strategy in the document are his. They were his. It was his idea to make as massive a push in the south and then, so to speak, with one battle do the whole thing. He was very gifted strategically.

Q. Well, when the persons listed on this distribution list put in their proposals with respect to this plan, did they follow this plan, or did they make changes as seemed advisable to them?

A. Personally they did not suggest any departure or alterations. I do remember, however, that the army had a smaller plan. They argued for a major battle in front of the Maas, and then standing on the other side of the Maas and pausing there, because they did not believe that plan could be executed. On this occasion they wrote a memorandum to him, which however, was not accepted by him.

Q. And did these consultations with the Fuehrer, and with the persons mentioned on the distribution list, take place before or after they had submitted their proposals, based upon this memorandum and outline?

A. All this happened before he gave us this memorandum. When he gave us this memorandum, that was really the first time he had expressed the intention to attack the West at once. It happened many times that additional measures to be taken were suggested, or that minor alterations were suggested, but the basis for all this was his directive which stood.

Q. Were you in personal agreement with the Fuehrer's plan?

A. Yes.

Testimony of Hermann Goering, taken at Nurnberg, Germany, 24 September 1945, 1550-1655, by Colonel John H. Amen, IGD, OUSCC. Also present: Andre Kaminker, Interpreter and S/Sgt. Horace M. Levy, Court Reporter.

Schmundt's Minutes of Hitler's War Conferences

Q. Are you acquainted with Lieutenant Colonel Schmundt?

A. You mean the Adjutant to the Fuehrer, who later became a General?

Q. Right.

A. Yes.

Q. And when was he Adjutant?

A. As far back as I can remember, he became Adjutant to the Fuehrer in 1938, and remained Adjutant until the day of the attempt in July 1944, when he was very seriously wounded, and later on died.

Q. And what were his duties as Adjutant?

A. He was Chief Adjutant to the Fuehrer and later on was Chief of the Personnel of the Army.

Q. Do you know his handwriting?

A. Yes, I suppose I can remember it.

Q. Did he write up minutes of meetings at which you and the Fuehrer were present, from time to time?

A. When I was alone with the Fuehrer, no, but if some other persons were present, it might quite well be that he took some notes.

Q. Now, I show you a photostatic copy of a document in German characters, and ask you whether you can identify this as Schmundt's handwriting? I think you will find his signature on the last page (handing to witness).*

A. I can recognize his signature, but I am not so sure about the handwriting itself.

Q. Well, you can definitely identify the signature as that of Schmundt, can you not?

A. As far as I can remember, that was the signature of Schmundt.

Q. You have no reason to question the authenticity of that signature?

A. No, I do think it is his signature.

Q. Now, do you remember a meeting in the Fuehrer's study on 23 May 1939, at which were present the persons named on the first page of the document?

A. At first sight, I do not remember exactly whether this meeting had been held on that date, because those conversations were rather frequent, but if I read the document itself, I might remember it.

Q. Well, first I just want to see if you can't identify the handwriting of the script, as being the same as Schmundt's signature.

A. Generally, I have only seen Schmundt's signature and not his handwriting, but this is the signature of Schmundt. I can say with a great amount of certainty that this is the signature of Schmundt.

Q. So that whether the body of the document contains his handwriting, at least you can definitely testify that he signed the document on the last page.

A. Yes.

Q. All right. Now, will you read the document carefully and tell me whether you have seen it before, and are familiar with its contents.

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*Document L–79, Vol. VII, p. 847.

A. (After reading part of document.) There is one sentence which says that there is a possibility of attack of Italy breaking through the Maginot Line, and that that possibility must be studied. That seems to be a mistake, because it doesn't make any sense.

Q. Which page is that, on your copy?

A. Page 15.

Q. We will have it retranslated.

A. Yes. (After reading document.) First of all, I want to say, I want to point out that I have never seen this document before. This is a memorandum which has been written by the Adjutant, as such, and has not been distributed. Therefore, I have not seen that document before.

Q. But you know that it has been certified as a correct record by the Adjutant, Schmundt, don't you?

A. On the whole document I can only certify that this is Schmundt's signature, but not on the handwriting on the document itself.

Q. I understand that, but I say, you will note that when Schmundt signed his name to it, he signed below the words "Certified A Correct Record."

A. I have a slight recollection of the whole conversation as it is brought out here in this document. Much of it corresponds to general lines as outlined by the Fuehrer, but on the other hand, there are many things in it which contradict the Fuehrer's point of view; but this is nothing extraordinary. It very often happened that when the Fuehrer had a certain purpose in mind, he only reasoned according to that purpose, and a few weeks later, he would give some very different point of view, when that particular subject was not in mind.

Q. But you have no reason to question the authenticity of this document, have you?

A. I have got no reason to doubt the authenticity of this document itself, but I must add that it is not absolutely certain that Lieutenant Colonel Schmundt has given exactly the real meaning of the Fuehrer. For instance, as far as the war against England is concerned, some indications in the document are very much against the Fuehrer's general trend of mind, for instance, the attack against the English Fleet. I remember that I proposed to the Fuehrer immediately after the day of England's declaration of war, to send the whole of the Luftwaffe against Scapa Flow, and that this had been absolutely forbidden; strict orders were given that this should not be done.

Q. But again you have no reason to question that this is the official document reflecting the minutes of the meeting, as certified by Schmundt?

A. Yes, I believe that is correct.

Q. Where would the originals of these documents ordinarily be kept?

A. I don't know exactly where those documents were kept in the Fuehrer's office. I have got all reasons to believe that all those documents, written by adjutants, would be placed in the safe of the office of those adjutants. After 1942, all the conversations with the Fuehrer, which were not strictly private, had been taken down in shorthand during his speech. As far as I know, they were kept. I don't know for certain, but I have been told two documents were kept, one in Obersalzberg in Berchtesgaden, and the other document with Bormann in the central office of the Party.

Q. Now, with reference to the sentence on page 15, which you thought was a mistake. The mistake, if any, must have been made in writing the German script, is that right?

A. Yes, of course, but it is very clear that it is entirely out of the surrounding text.

Testimony of Hermann Goering; taken at Nurnberg, Germany, 1 October 1945, 1550-1700, by Colonel John H. Amen, IGD, OUSCC. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; S/Sgt. Horace M. Levy, Court Reporter.

Use of POW'S for Forced Labor in War Industries

Q. Whose idea was it to supply prisoners from concentration camps to work in connection with the aircraft industry?

A. It was the principle that workers were provided by concentration camps to work in industry. This was not a matter that was only done for the air forces.

Q. I say whose idea was it originally?

A. As far as I remember, Himmler suggested it to the Fuehrer.

Q. Were you present at the time?

A. No, that is what I heard.

Q. Where did you hear it?

A. That was generally spoken about. This not only applied to prisoners in concentration camps, but to prisoners generally. There was even talk about captured generals being used for work.

Q. And, as a matter of fact, they were, weren't they?

A. Yes, the prisoners should work.

Q. And Czechoslovakians were used also, were they not?

A. That I don't know. The Czech POW's were treated the same as the prisoners of the other nations with which they had been captured. As far as I know, they were not committed in the armament industry, that is, the prisoners of war.

Q. Did this program have a special name?

A. I believe there was a special name only for the extension of the subterranean armament program, but I don't remember the name.

Q. Now, when did you first start using prisoners of war from the concentration camps, in connection with the aircraft industry?

A. As far as I know, there were never any prisoners of war in concentration camps.

Q. Oh, but there were.

A. I don't remember the exact time when prisoners were committed for the armament industry. However, they were committed.

Q. And was it early or late in the war?

A. I believe that it only really started in 1942, when strong demands were made on the armament industry, when the workers were drafted into the Army.

Q. When did you start making airplane parts underground?

A. I believe that started only toward the end of 1943, if I remember correctly.

Q. Do you know when it was that Himmler first made the suggestion to the Fuehrer?

A. I can't say that. I don't even know whether Himmler directly suggested this to the Fuehrer, or whether he just provided the workers for the industry.

Q. Well, at any rate, Himmler was the medium through whom these workers were obtained by whomsoever wanted them; is that correct?

A. Yes, it was partly Himmler, that is, for the people that came from concentration camps. For the people that came from other prisons, the Minister of Justice was responsible.

Q. How about Speer?

A. Speer only requested workers. It didn't matter to him how he obtained them; he only requested them.

Q. Well, did he participate in the working out of the plan?

A. No, I don't think so. I believe that he only requested the workers, and then when he obtained them from whatever sources he could get them, he would distribute them.

Q. Now, when you wanted workers, for example, to make airplane parts in the underground factories, what procedure did you follow to obtain them?

A. If I remember correctly, there was an SS Group Leader, Kummler, who was responsible for these subterranean factories, that is, for the extension of these factories, not for the running of them; and he submitted plans; and I would pass on them if the proposed locality was right. He would submit proposals to the Fuehrer; and he was responsible to him. He was appointed to take care of these things. Then, there was also a subterranean factory at Kahla, in Thuringia, which was directly under Gauleiter Sauckel, of Thuringia. He was solely responsible for it.

Q. Now, these prisoners from the concentration camps, of course, had to work whether they wanted to or not; is that right?

A. That I don't know, but I assume it.

Q. Well, why don't you know?

A. Because I only had little to do with these things.

Q. Oh, you had quite a lot to do with them, personally.

A. How do you mean? I did not take any interest in those things.

Q. Well, do you recall that on 14 February 1944, you sent a teletype to Himmler, requesting a further supply of prisoners for construction and production work in the aircraft industry?

A. That is possible.

Q. Well, I show you a photostatic copy of such a document, dated 14 February 1944, and I ask you to read it and tell me whether you have ever seen the document before and are familiar with its contents (handing to witness)?*

A. I did not see this document before. Many such documents were issued by my department without my having seen them or dictated them, if the fundamental issue was decided before. But this was done under my responsibility.

Q. And have you any question as to the authenticity of the document?

A. No.

Q. So that you can identify that as an official communication, emanating from your office to Himmler, right?

A. Yes.

Q. And you noted the covering letter?

A. Yes, that is the Group Leader, Kummler, whom I mentioned before. I don't know the second document, but I have no doubt that it is in order just like the first one.

Q. Am I correct in assuming that you had made similar requests prior to this date?

A. It is quite possible that requests in this direction had been made before.

Q. I hand you photostatic copies of two teletypes, dated 18

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*Document 1584–I–PS, Vol IV, p. 117.

February 1944, signed by Himmler, and addressed to you and to General Pohl, with respect to the same matter, and I ask you to read them, and tell me whether you have seen them before, are familiar with their contents, and can identify the same as being official communications which you received (handing to witness) ?*

A. I do not remember them, and I have never seen the first; at least, that I am certain of, that I have never seen the first. If such things came in, that is, answers, they usually would not be submitted to me but my adjutant would inform me about them. However, I have no doubt about them at all, and they are official documents without a doubt.

Q. You have no reason to question the authenticity of either documents?

A. No reason at all.

Q. And you do recall the subject matter of both communications?

A. Yes, this is quite clear; the commitment of prisoner of war labor in the armament industry was discussed—not prisoners of war, but just plain prisoners in the armament industry—was discussed quite frequently. I don't remember this particular detail, but I have no doubt about it.

Q. Well, you know very well, don't you, that prisoners of war were used for these purposes?

A. Yes, Russian prisoners of war.

Q. Oh, but also other prisoners of war.

A. I was always told that in first line, Russian prisoners and French were used. I only saw Russian prisoners used.

Q. But you do know that French prisoners were also being used?

A. Yes.

Q. But the larger number were Russian prisoners of war.

A. Especially for excavations, when this thing was started, that is when I saw them. However, at the machines themselves, that is, for higher technical jobs, there were the French prisoners of war. And partly, the French prisoners of war had been released when they obligated themselves to work as civilian workers.

Q. How about British prisoners of war?

A. As far as I know, they refused to be committed in such a manner, as a matter of principle; and I heard once that they couldn't be used anyway, because they were much too lazy.

Q. Well, it is not your thought that the Russian and French prisoners of war wanted to be used for this labor, is it?

A. I did not concern myself with these details, with these people, but usually the French were regarded as the most willing workers, and they were willingly taken as well in agriculture, but I really don't know the details.

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* Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. Well, you do know that regardless of whether they wanted to or not, they were obliged to work under this program, don't you?

A. Anyway, I know that they received certain prerogatives when they declared their willingness to work. I know that there were certain advantages for them. They were more free, and they also would be almost entirely free after a certain time. They walked to the factory freely, and on Sundays, if they were in Berlin for instance, they could walk around without any surveillance, and I know it for a fact, that they preferred this arrangement to the stiff regimentation in the camps.

Q. I don't doubt that.

Now, I show you a photostatic copy of another document dated 22 February 1944, addressed to Himmler, and signed by Pohl, being a reply to the inquiry cited previously, giving a complete detailed report of SS participation through the use of concentration camps prisoners in the aircraft and allied production program to date. I ask you if you have seen this document before, and are familiar with its contents, and can identify it as an official communication (handing to witness)?*

A. I don't know this whole thing, because many of these* details were worked out directly between the subordinate departments. I don't even know many of the things that are mentioned there, because they belonged to the armament staff. However, I have no doubt that this is an official document.

Q. Have you any reason to question the authenticity of the document?

A. No.

Q. And you can identify it as being an official communication on the subject matter with which you were generally familiar at the time?

A. Yes.

Q. I show you a photostatic copy of another document, * dated March 8th 1944, being a memorandum to Pohl, signed by Himmler, with reference to the transmittal of a draft of the document previously referred to, to Goering, expressing the opinion that supervision of such concentration camps prisoners engaged in aircraft production was not sufficient, and suggesting the taking over of the management of such places of production. I ask you to tell me whether you have seen those documents before, and are familiar with their contents, and can identify them as official communications (handing to witness)?

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* Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

A. Of course, I have not seen this document, but I do remember that there was some discussion as to whether the management should be responsible for the security and surveillance in the factory, or whether somebody else was to be responsible for this. As far as I know, I was only interested in the results, whereas the regulations and the formulations with which the work should take place was up to the manager. However, I do not have any doubt that this is perfectly genuine.

Q. You have no reason to question the authenticity of those documents?

A. No.

Q. And you can therefore identify them as being copies of official communications?

A. Yes.

Q. I show you a photostatic copy of another document,* dated 9 March 1944, addressed to you, and delivered by Himmler personally, and ask you whether you have seen the document before, and are you familiar with its contents, and can identify it as an official communication from Himmler to yourself (handing to witness)?

A. Of course, I don't know this document, because there were many reports on the results of the work of many departments, but there is no doubt about this document.

Q. Well, that document was delivered to you by Himmler personally, was it not?

A. That is absolutely possible, but I don't remember it any more.

Q. Have you any reason to question the authenticity of this document?

A. No, not the least. That is the letter which is in reply to the document which has just been shown to me from Pohl, and this is a summary of the whole thing.

Q. And you can identify that as being a copy of an official communication, delivered by Himmler to yourself.

A. Yes.

Q. I show you two additional documents, being two inter-departmental memos, bringing the report previously referred to, to the attention of SS Major General Pohl, and SS Brigadier Fegelein, suggesting that Obersturmbannfuehrer Brandt was entirely familiar with the matter, and ask you whether you have seen any of these documents before, and are familiar with the contents, and can identify them as being copies of official communications (handing to witness)?*

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*Document 1584–III–PS, Vol. IV, p. 118.

A. Of course, I didn't see these two documents, because they were never addressed to me, but there is no doubt about them. They are official.

Q. You have no reason to question the authenticity of either document?

A. No.

Q. And can identify them as copies of official communications?

A. Yes.

Q. What "Brandt" is that?

A. He is unknown to me. In any case, it is not Professor Brandt, the well-known physician.

Q. It is not Karl Brandt?

A. No, it is quite possible, of course, that the man knows me. but I don't know him, at least, I don't know him consciously.

Q. Now, I show you another document, and being a teletype, dated 7 April 1944, addressed to Himmler, and signed by Hans Frank, requesting the supply of 500 prisoners for excavation work and tunneling operations, and ask you whether you have seen this document before, and are familiar with its contents, and can identify it as a copy of an official communication (handing to witness)?*

A. No, I don't know this communication, and I have never heard about the factory which was proposed in this document. However, I have no doubt that this is an official communication.

Q. You have no reason to question its authenticity?

A. No.

Q. Were you familiar with the fact that Hans Frank was requesting prisoners for this type of work?

A. For this type of work, no. This is the first time that I read of this intended work. This is the first time. I don't even know whether it was for the air forces.

Q. Well, did you know that Frank was requesting prisoners for any such purposes?

A. No, I don't know that. I only saw Frank two or three times in my whole life.

Q. Now, I show you another document, being a reply from Himmler to Frank, dated 8 April 1944, and ask you the same questions with regard to this document as I asked you with respect to the previous exhibits (handing to witness)?*

A. I don't know it, but the same applies here. I have no doubt that it is an official communication.

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* Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. I show you a copy of another document, dated 8 April 1944, from Brandt to Pohl, transmitting a copy of the reply to Frank, and requesting Pohl to inform Kummler, and ask you the same questions which I asked you with respect to the previous exhibits (handing to witness).*

A. The same applies here.

Q. Now, I show you another document, being a letter dated 17 April 1944, signed by Speer, Minister for Armament Productions, and addressed to a number of authorities engaged in the supervision of armament production, and ask you the same questions as I did with respect to the preceding exhibit (handing to witness)?*

A. I don't know the document itself; I have never seen it. The fact of the Fuehrer's demand for two such great works is well known to me. As a matter of fact, those works were not constructed in France or the Protectorate, but on German soil, in Bavaria. I believe that one was near Kufringen, in Bavaria, but I don't remember the other; but I do remember that, however, finally both of them were constructed in Bavaria.

Q. But you have no reason to question the authenticity of the document, and you can identify it as a copy of an official communication?

A. Yes, this is exact. Also the persons mentioned in there, everything is exact.

Q. Now, just what did Speer have to do with this forced labor program, anyway?

A. In March 1944, the program for the production of fighters was pushed very much, and Speer at that time was in charge of the armament industry. Then, either in the end of April or the beginning of May, he took over the total production for the air forces, and also was responsible for the war production. At that time, of course, he needed many workers, and whenever he could not get them, he would make a request to the Fuehrer and would get him to intervene. However, as matters were not like that, that Speer could say that such and such authority must give him workers, all he could do was demand them. He could intervene, for instance, in such a manner that he could close down certain parts of the industry. For instance, he could close down the textile industry and order the workers to be used on war production. That was the extent of his powers. However, he had no power to commit prisoners of war, prisoners, or prisoners from concentration camps, without the consent of the authorities who were responsible for it. He had to request them.

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* Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. Well, in other words, he would request the prisoners from the concentration camps from Himmler?

A. Yes.

Q. But maybe he would speak to the Fuehrer about it first?

A. Well, that certainly was the case for larger requests. For instance, the Fuehrer was always very much interested in production and also the details, and he would have very extensive reports made to him by Speer, and then Speer might say that he could carry out such and such a scheme only if the manpower was available, and would get the Fuehrer to give a direct order in that direction. Speer received especially great demands from the Fuehrer in 1944 and 1945, and he must have answered him that he could carry out these schemes only if his request for materials, manpower, and so on, were met; and then the Fuehrer personally intervened many times.

Q. Have you any idea of the total number of concentration camp prisoners requested by Speer?

A. I can't say how extensive this was. As far as I know, Speer could only inform Himmler as to how many workers he would need, and then Himmler would provide them, but I don't know to what extent this was carried out.

Q. Now, I show you another document, bringing the previous exhibit to the attention of Pohl, and ask you the same questions which I have asked you with respect to the previous exhibits (handing to witness)?

A. I would like to make an additional statement to the things which we have just talked about.

Q. Yes.

A. I know that there were very many strong differences about the requests that Speer put in for manpower, because they were never fulfilled in total. I know that there were differences before the Fuehrer, and they were very vivid between Sauckel and Speer. Sauckel would state that he had so many prisoners available, and Speer would claim that he had only received a fraction. I should have said that Sauckel had so much manpower available, and then I myself, was called in 1944 to investigate the controversial opinions that were held between Sauckel and Speer. At that time I found out that Speer generally could only request a number of workers that he needed, and that he would only receive a fraction of them. For instance, there were figures that so many workers were from France, or so many from a conversion that had taken place in an industry, or from Italy, or from prison camps, but in effect, he only received a fraction of them. That is all I wanted to add to that.

(Referring to document) As far as this document is concerned, I have the same answer as to the other questions.

Q. I show you another document, being a letter dated 7 May 1944, to the Personnel Bureau SSEF, Attention of Colonel Brandt, and signed by SS General Kummler, with respect to the production of tank engines; and I ask you the same questions which I have asked you with respect to the preceding exhibits (handing to witness)?*

A. The same applied here, the same answer.

Q. Now, on the whole, did you find that this forced labor program worked successfully?

A. Yes, according to the reports which I received, it worked out successfully.

Q. Have you any idea how many Czechoslovakians were incorporated into this program?

A. No, that I really don't know.

Q. Poles?

A. That I don't know either, but there were certainly Czechs and Poles there, but I don't know the number.

Q. Do you know what kind of work they did?

A. Of all the factories that are mentioned here, I personally only saw the factory at Kahla, and there were Germans and Russians working there. The Germans were not prisoners; they were just real workers, and the Russians were prisoners of war.

Q. Is that the one where they made airplane parts?

A. This was not so much for airplane parts. At this factory, there were to be a thousand propellerless planes to be constructed every month. I am referring to the type 262, and that did not only include the fuselage, but also the machines and everything. It was a very extensive factory. I didn't ever see the others. The great factory at Wittel was first constructed for the production of V-2 weapons. Later, when the production of V-weapons was curtailed heavily, it was used in part for plane production.

Excerpts of Testimony of Hermann Wilhelm Goering, taken at Nurnberg, Germany, 3 October 1945, 1500-1630, by Col. John H. Amen. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; S/Sgt. Horace M. Levy, Reporter.

*Goering's Part in the Anschluss***

Q. Now do you remember an agreement was reached in the summer, about 1937, between the German Government and the

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* Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

** See document 2949–PS, Vol. V, p. 628.

Austrian Government to the effect that the two nations would exchange visits of economic representatives?

A. Yes.

Q. And do you recall that when the Austrian representatives came to Berlin you invited them to dinner?

A. Yes. Yes, I know all about it. I remember. I can say I remember that one. They got very frightened.

Q. And do you remember the speech that you made?

A. Yes, just about.

Q. What was the substance of it?

A. I believe that I made it clear to them that the Anschluss was to be effected soon, one way or the other.

Q. Well, did you make it clear to them that they were traitors to the German cause, and should be ashamed of themselves for not making Austria part of Germany?

A. I didn't tell it to them quite as hard in the conversation, but in substance I did tell them that.

Q. And do you also remember that Schuschnigg later on demanded a retraction and an apology for the speech?

A. No. This conversation did not take place at the dinner; but the gentlemen arrived in the afternoon, and I talked to them something to the effect that you just mentioned to me. They, of course, were very frightened. They at once called Vienna, and talked to Schuschnigg; and I know what they said, because the telephone conversation was monitored. Then it was debated whether they should go to the dinner; and I believe that Schuschnigg demanded that I should speak a few deprecating words to them before the dinner. Then the Austrian envoy in Berlin intervened, and said they had better not ask me that; and the dinner was to take place anyway. Well, I went to the dinner, and the Austrian envoy was there. He told me that maybe it would be appropriate to say a few nice words to the delegates in order to lessen the fright that they had received in the afternoon; but he never demanded a retraction and an apology.

Q. Didn't you eventually make a retraction or an apology, through diplomatic channels, to the Chancellor of Austria?

A. I did not do it. If the Foreign Office did that behind my back, it is not known to me; at least, I didn't do it in any case.

Q. Well, it was done in writing, was it not?

A. Yes. But anyway not by me.

Q. By whom?

A. I don't know. It is possible that—well, I don't know. The diplomats, they're different, and perhaps Mr. von Papen wrote a few words in Vienna, or he asked the Foreign Minister to write a few words that would have a calming effect. I don't know.

Q. But you don't deny that such a retraction or an apology might have been made through diplomatic channels, right?

A. That is possible. As I said before, I just made the thing seem a little less strong in a humorous manner in the evening, if I remember correctly, but I don't know what the diplomats did. I do remember that I said, in the evening, that apparently I had been understood slightly in the wrong direction, in the afternoon.

Q. You meant what you had originally said, though, didn't you?

A. That is self-understood.

Q. Now, do you remember in March 1938, March 11th, to be specific, you had some telephone conversations with Seyss-Inquart and Glaise-Horstenau?

A. Yes, certainly.

Q. And those conversations were monitored?

A. Certainly. I knew that they were. I knew that they were being monitored, and that is why I held them the way that I did.

Q. And what was the substance of those conversations?

A. If I remember correctly—you mean the conversations that took place the day before the Anschluss?

Q. Yes.

A. I made a number of telephone calls to Vienna on that day. On that day, the whole thing started to slide, and if I remember correctly Schuschnigg went so far as to say that there would not be any elections. I said that it would be too late; and I talked to Seyss-Inquart, and told him that this was not sufficient. Things really started to slide then, and I felt that this was the decisive hour. In other words, it was to be decided now whether we would achieve the Anschluss without any difficulties, and without paying too high a price. Then, when Schuschnigg went a little farther, I demanded the next thing; and so it went on. I don't want to deny that I possibly was the most active man in Berlin on that day. I might have been even more active than the Fuehrer himself. I just felt that it was the only decision.

Q. Well, what was the substance of what you said in these telephone conversations? With particular reference to invading Austria, the first call was about ten o'clock in the morning.

A. As far as I remember the telephone conversation, the whole conversation took place in the morning, and was about the mission that Glaise-Horstenau received from us in Berlin. It was his mission to talk to Schuschnigg on the one side, and to Seyss-Inquart on the other; to tell them that things were critical now; and it was his mission to go with Seyss-Inquart to stop the elections and to force further compromises from Schuschnigg. I remember when Glaise-Horstenau took off in a plane from Berlin, he did not look very courageous, and he was worried about what would happen. Also I knew that Seyss-Inquart—I am sorry, I made a mistake here—that Glaise-Horstenau was a very jovial gentleman, but he was not very energetic, and I just was worried about what had happened to his mission. I wanted to make sure that things were working all right.

Q. Well, the election had been proposed for the 9th of March?

A. The election was not to take place.

Q. Well, that is the substance of what you were saying, that the election should be called off, or else Germany would invade Austria, right?

A. Yes.

Q. And is this the substance of the conversation: "Goering asks me (Seyss-Inquart) to tell the Chancellor immediately that he has one hour to revoke the Plebiscite, and to answer publicly that the Plebiscite should be revoked; and that in three to four weeks Austria would make the Plebiscite, concerning the Anschluss with Germany, conform to the rules of the former Saar Plebiscite, held by Germany in that area"?

A. This was the immediate opinion of the Fuehrer. It was his opinion that it should be handled in such a manner. As I said before, in the course of the day, events started to slide so fast, that towards the evening there was a completely different development, from which then followed the occurrences which subsequently took place.

Q. Well, when Seyss-Inquart had been informed by Schuschnigg that the latter was willing to delay the election but would not agree to the application of the rules of the Saar area election, Seyss-Inquart then found you and informed you of the Chancellor's decision?

A. Yes. We were in continual conversation by telephone.

Q. And then at one o'clock in the afternoon, there was a second phone call from you to Seyss-Inquart and Glaise-Horstenau which went as follows: "Reichsmarshal Goering says that the situation in Austria can only be saved when Chancellor Schuschnigg resigns within two hours from now."

A. I wasn't a Reichsmarshal at the time. I was only a Field Marshal.

Q. "And the situation in Austria can only be saved if Chancellor Schuschnigg is nominated as his successor, as next Chancellor of Austria. When you (Seyss-Inquart) don't give me any reply by phone within those two hours, I know that you are hindered by force—"

A. Yes, as far as I remember, this was at four o'clock.

Q. "Know that you are hindered by force from doing so, and we will begin to march against Austria."

The Chancellor resigned at 3:30.

A. Well, the hours really don't matter, but in substance this is just about what happened, and I believe I said it before, that by the time Schuschnigg would agree to some compromise, it was so late already that some other developments had taken place; and the events just kept on sliding; and they were temporarily accelerated then. We were informed that the people of Vienna were already on the streets, and the people of Graz and Styria had declared their willingness to go with Germany. As I said before, I considered this the most favorable hour for a rapid and cheap way to gain the Anschluss; and I will not deny that at all times I have been for the Anschluss of Austria, which has a purely German population with the Reich.

Q. Late in the afternoon of that day, do you recall making another telephone call to Seyss-Inquart, demanding that he immediately send a telegram to you which would ask for the assistance of German troops in Austria, because the internal conditions in Austria were such at that time that the Austrian government could no longer cope with them?

A. Yes, this was desired by the Fuehrer, and I wished for the same thing.

Q. And isn't it a fact that this telegram, in effect, was a pretext to get German troops inside of Austria under the guise that you needed them to control the internal situation?

A. Yes, that is so. The true reason behind that was that we were not so much afraid of finding any resistance in Austria, as we wanted to have troops in Austria as quickly as possible, for fear that some outside influence, say, the Little Entente, would make an occupation of their own, say, of the Burgenland, or some other part, say, southern Styria. This was in effect to guarantee that none of the other neighbors would come in and take their little parts, so to speak. The Fuehrer had misgivings about this, and that is why he wanted troops in there. The telegram was made the internal reason for it.

Q. But isn't it also a fact that prior to 4:00 p.m. on March 11, 1938, you had sent Keppler to Vienna; and that after arriving there, Keppler gained admittance to the Chancellory, set up a German office inside, called Schuschnigg and told him, in effect, the following—

A. I want to say something here about the dispatch of Keppler. He was dispatched by the Fuehrer. I would have sent somebody else. Of course, that doesn't matter here. At any rate, he was dispatched by the Fuehrer, and he received his information from the Fuehrer; and I was there when he received it; and I added my own remarks to his.

Q. What was Keppler? How did Keppler happen to come there?

A. We used Keppler for missions of high diplomatic nature, so to speak. As far as my own opinion of him goes, he was competent for certain economic matters. However, personally, I would have never trusted him in such a task. He did not carry out the power of his convictions, and he was not hard-hitting enough to carry out something like that. At least, that was my opinion of him. He was a little slow, and I thought at the time that somebody else might have been better used for that.

Q. Now was he instructed or did he, in effect, tell Schuschnigg: "You see, now, that what I told you two weeks ago is correct. You should have followed my advice. Are there any wishes which you have?"

A. This is correct; but of course, this is from the Fuehrer. I never talked with Schuschnigg before. The Fuehrer is referring to the conversation which he had with Schuschnigg, two weeks prior.

Q. Where were you when these various telephone calls were made?

A. I was in the Reichschancellory, together with the Fuehrer, in one room.

Q. And how did you know that the conversations were being monitored?

A. That is self-understood. Which state does not monitor official conversations? I wanted Schuschnigg to hear all that.

Q. What instructions did you or the Fuehrer give to Keppler?

A. The Fuehrer gave him this instruction, and he furthermore gave him instructions to support Seyss-Inquart; and at that time, that is in the afternoon, the exact manner of the Anschluss had not been fixed, and that was only fixed later when Hitler talked at Linz. My instructions were the following—to be frank, at that time I knew Seyss-Inquart very little, and also his new entourage. However, the idea that I had of them, or let's say, the suspicion that I had of them, was that they were very willing to kick out Schuschnigg, and that they wished for a close relation with Germany. However, they did expect to get something out of this for their own personalities, and it was their wish to remain as independent as possible. I didn't want this whole thing to have the effect that the government of Schuschnigg would be kicked out, and that merely a camouflage Nazi government of Austria would be instituted under them. But I told Keppler to keep a sharp lookout that they would not take things into their own hands, and that the Anschluss was to be effected in such a manner as the Austrian people had wanted it in 1918. And just that was the reason, that I had misgivings in sending such a soft man as Keppler.

Here is something that I want to say by way of explanation; I can only emphasize again that I spent a great deal of my youth in Austria, and therefore was very familiar with everything that went on in Austria. Moreover, my father, at the time of the Kaiser, in Austria, already had the ideological concept of the Anschluss. This is only by way of explanation of how I came to have this opinion. So to speak, I spent half of my youth in Germany, and half my youth in Austria.

Q. Was the Fuehrer present during all of these telephone conversations, to which you have testified?

A. He was present at 80 percent of them at least—no, I remember now, there was only one conversation which I did not make from that phone; that was later in the evening.

Q. And everything which you did on that day was done with the knowledge, approval, and at the direction of the Fuehrer?

A. Yes. He partly directed the conversations, or he heard them and he consented to what I said. I only can say again, that on this afternoon perhaps, I was more driving than he was. However, he consented to all these things. Of course, I couldn't do any of those things without the Fuehrer's approval.

Goering's Opinion of Hitler's and Bormann's Fate

Q. Do you think the Fuehrer is dead?

A. Absolutely. No doubt about it.

Q. What makes you think so?

A. This is quite out of the question. We always knew that the Fuehrer would kill himself if things were coming to an end. We always knew that. There is not the least doubt about it.

Q. Was there any understanding or agreement to that effect?

A. Yes. He said this only too clearly and too explicitly to different people, and we knew about all this exactly.

Q. What about Bormann?

A. (Throwing hands into the air) If I had my say in it, I hope he is frying in Hell, but I don't know about it.

Goering's Tip to Guido Schmidt on the Anschluss

Q. Why did you put Guido Schmidt into the Hermann Goering Works?

A. The Hermann Goering Works had very strong economic interests in the Balkans, and as he had been the Foreign Minister of Austria, he knew all the economic treaties that had been reached between Austria and the Balkans. I always liked to trade very much with the Balkans, and I will frankly admit that I had personal sympathy for Guido Schmidt. For instance, on the day of the march into Austria, I had him brought to Berlin at ten o'clock in the morning, to be sure that nothing would happen to him.

Q. I presume then that he had been cooperating with you prior to the Anschluss?

A. Well, "cooperate" is really saying a little bit too much. He paid one visit to Berlin before the Anschluss, and he attached himself more to me than either to the Fuehrer or the Foreign Minister. He was really my guest most of the time, and there is only one story here that I would like to tell you about, if you are interested in it.

Q. All right.

A. I had a map of Germany, which was done in the old style, so to speak. Instead of having the name of the town, it would have some monument that was in the town to indicate it; for instance, for Berlin there was Brandenburg Arch, and for Munich there was the Frauenkirche; and Austria was also included in this map; and I remember I led him before the map; and when he looked at it, and saw the map, and also that Austria was included, and he made the remark to me: "You are really preceding historic events a little, aren't you?" So I said to him: "If I knew something exactly, I might just as well include it into the map. There is no sense in changing maps every few minutes." And by this way I told him just about how things were going to happen.

Testimony of Hermann Goering, taken at Nurnberg, Germany, 7 October 1945, 1520-1530, by Col. John H. Amen. Also present: Lord Wright, chairman of the United Nations War Crimes Committee; Pfc. Richard W. Sonnenfeldt, Interpreter; WOJG Jack Rund, Reporter.

Goering's Plan for Disposing of His Art Collection

Q. What was your program about acquiring art objects, other than the French ones which we discussed the other day?

A. It was my intention to start an art gallery according to new principles, and I had always been very much interested in such things, and thus I had tried to acquire articles of art value from many countries for this.

Q. Do you mean a personal art gallery, or an art gallery for some branch of the government?

A. It was my intention to build up an art gallery which I meant to hand over to the German people, and I wanted to build it up myself, and I had some new principles there that I had thought of myself.

Q. Did you ever sign any written articles which would indicate that it was to be given over to the German people?

BY LORD WRIGHT:

Q. Where was the art gallery going to be established?

A. It was to be built at Karinhall, which was a public building anyway. That is, it belonged to the State. I wrote an official communication to the Finance Minister, Schwerin-Krosigk, about this and informed him about this matter.

Q. But you also acquired many objects of art on your own account, did you not?

A. Yes, I did, but they were to be assigned over into this gallery as a personal gift of mine.

Q. Yes, but they never were, were they?

A. Well, yes, the gallery was not actually being built, but the preparations were just being made and I had informed the Finance Minister I would give those articles, which I had personally acquired, into this gallery.

Q. But the objects never got into the gallery, did they?

A. At this time the gallery hadn't been handed over yet. It was just being built. You have to differentiate here between two entirely different sets of objects. First of all there were those objects which I had acquired from my own means, and which were my personal property, and which I had intended for this gallery. Then there were those art objects that were acquired from the art budget, and I had informed the Minister that the whole thing was supposed to be handed over to the people.

Q. But you had agents that were going around representing you, personally, in various localities, did you not?

A. Yes, but I want to emphasize again that I also wanted to hand art objects over into this gallery, which were my own property. Then, on the other hand, there were many things, such as portraits and other art objects, which were of no real value for the gallery. It was my intention to only put the really good pieces and objects of art into this gallery.

Q. What were the names of the agents who represented you or the Government in the purchase of these objects of art?

A. You have to make a difference here. You cannot speak of the Government as such that it was interested in art objects. I had my representatives, and when they acquired an object of art for me, they never knew whether they acquired it for me privately or for me in my official capacity.

Q. Who paid their salaries?

A. They were art dealers and they got a profit from these transactions.

Q. A commission?

A. Yes. A commission.

Q. But they were employed by you personally were they not?

A. Well, I used art dealers for that, and there really was only one agent who was responsible for the coordination of the whole matter. For all the other transactions I merely used art dealers.

Q. Who was that?

A. That was Hofer. He was also responsible for the administrative aspect of my art objects.

Q. Did you ever actually turn any of these objects of art over to the Government?

A. How could I hand them over to the Government? The Fuehrer and the Minister of Finance both knew that I was starting a gallery of art objects and they knew that it was my intention to open this gallery after the war, when I had completed my collection. At this time most of the objects of art were in safe places, in subterranean places and such. You must remember that this whole thing was still in a stage of transition. In other words, objects of art were acquired and then later they might be exchanged for another art object that would serve the prospect better. In other words, the thing was not complete. It was merely a plan that had been thought out and had been drafted, but nothing as yet had materialized, and everything was in a stage of transition as yet.

Q. Did you, or did you not, ever turn over any of the art objects, which you acquired, to the Government? Yes or no.

A. No. How could I do that? Who was there to receive them?

Excerpts from Testimony of Hermann Goering, taken at Nurnberg, Germany, 8 October 1945, 1100-1230, by Col. John H. Amen. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; WOJG Jack Rund, Reporter.

How Goering Obtained His Art Collection

Q. What were the names of your principal agents for the purchase of art objects?

A. If I may, I would like to explain to you how this whole matter was handled. Since it had been known for a long time that I was very interested in art objects, I used to get offers from several countries. For instance, partly these offers came from art dealers, say in Switzerland, Italy, or other countries near there, and they would inform me that an auction would be held, and they would actually send me the auction list. Also it happened very many times that private people would contact me if they had art objects that they wished to place on sale. Moreover, there were several men that were interested in the subject generally, and I told them just what my wishes and interests were. In the main, it was Hofer who was in charge of the administration of my art collection. He was an art dealer by profession, and in addition to administering my collection, he remained in that profession. Being a well-known art dealer he knew all the art dealers, I might say in all the countries, and kept in contact with them. Especially in France there was a Dr. Bunjes, who would inform me any time that he heard of some art objects that were for sale or on auction. He would inform me of the fact. However, this was not his main occupation, and he just did it, so to speak, as a sideline. Also, there was another art historian, Dr. Lohse, who worked in about the same capacity as Bunjes. Then there was also Dr. Muehlmann.

Q. And Angerer?

A. Yes, he too, but only in a few cases.

Q. And Bornheim?

A. Bornheim was an art dealer like so many others.

Q. Miedl?

A. Miedl, again, is an art dealer.

Q. Reber?

A. No, I don't know him, but it is quite possible that he was in some connection with Hofer. The name is not known to me.

Q. Bunjes?

A. Yes. I mentioned him before.

Q. Von Behr?

A. You have to look at von Behr in another connection. He was not directly an agent of mine, so to speak, but he was responsible for Rosenberg's collection of art and art research.

Q. What were your financial arrangements with Hofer and Lohse and the rest of them?

A. There was no financial arrangement made with Lohse and Bunjes. They worked in such a way that people who were interested in art sales or art auctions would contact them and they, in turn, would inform me. With Hofer too, there was no direct arrangement as such. Being an art dealer he would make a certain commission any time that he sold me portraits, or enabled me to buy them at an auction sale. In addition to that, his wife was in charge of the restoration of all portraits, and thus she got some monetary advantages out of that. Otherwise, he had the advantage he lived without paying any rent, and as I said before, he could earn a commission any time that he enabled me to buy a portrait. It was my intention to give him a position of director of my collection after the war, when things came to such a stage, but at the time he worked for me this had never materialized.

Q. How much of a commission did he get?

A. I really don't know how much he got. For part of the portraits, he didn't get any. That is, those which he didn't discover himself. For the others, he made the arrangements directly with the dealers.

Q. Frequently, you and Rosenberg and the Government were all trying to get the same objects for yourselves, were you not?

A. Yes. It is very unfortunate that this happened. Many times we did not know about it, and thus the prices went very high with the art dealers. Colonel, if I may make the remark, I want to tell you for instance that if I went to Holland or Paris, or Rome, I would always find a huge stack of letters awaiting me. There would be letters from private people, princes and princesses, and anything that you want, and there were very many genuine offers, and many fake offers, and the prices were anywhere from good to improbable, and everybody offered me this stuff to buy.

Q. Some of the objects which you got were confiscated objects of art, were they not?

A. We must differentiate here between two separate cases. Firstly, those objects that were bought in free trade, so to speak. The second case are those that were collected by the organization of Rosenberg. Those were articles that had been confiscated from people who had left the country. I would like to make a short remark here about this Rosenberg commission. They collected and registered all their art objects, and they were destined either to go to the Fuehrer's gallery in Linz, that was to be built, or to the Hohe Schule that Rosenberg was going to build at the Chiemsee. It was my intention that not all of these art objects should go to southern Germany, and I had the intention to buy some of them for my gallery. I bought those things and they were estimated, not by German art experts, but by French experts, and then it happened very often that after I made all the arrangements, the Fuehrer would see a photo of the objects and I would have to return things to him because he wanted them.

Q. What was the Kunstfond?

A. The Kunstfond was an art fund which I had instituted for the purchase of art objects.

Q. Where did the money come from that went into that fund?

A. It was partly made up by private contributions which I received to build up my gallery. At one time I also received a large amount from the Fuehrer, and then I myself would give to this fund. The fund did not contain any money that came from State sources.

Q. Who was authorized to deposit and withdraw from that account?

A. To deposit or withdraw money in there?

Q. Yes.

A. That was I.

Q. Exclusively?

A. Yes. Only I.

Q. Were all of your purchases and sales cleared through that account?

A. No. This fund was instituted only very much later by me. Here is something else I want to call to your attention. I inherited a certain amount of art treasures.

Q. Did you employ various people to work on this art collecting business?

A. Does the Colonel mean in the acquisition of these art treasures, or after the acquisition, to work on them.

Q. Both.

A. In the case of who I employed before the acquisition of the objects, I think I explained how they were offered to me from all sides, in all countries. After the acquisition, there were two things that were mainly done with them. The first thing was to classify them, and second to conserve them; that is, to prevent them from blistering, or the paint from peeling, or what have you. All those things that are required to keep them in good condition. This was handled at first by my secretariat, and later on by Hofer and his staff.

Q. Most of these objects were kept in Berlin, were they not?

A. Yes. Almost all of them. Only when the Russians were approaching were they moved.

Q. When and how were they moved?

A. They were moved from the end of January 1945, through February and March 1945, by rail.

Q. Where are they now?

A. They were moved to Berchtesgaden.

Q. All of them?

A. Since I, myself, was arrested by Hitler, I don't know whether all of them ever did get there, but I am sure that the greater amount of them did get there. I would say at least 90 percent—over 90 percent. I have to say something else here; that I had a number of art objects which were not destined to go into the gallery. They were art objects, but in themselves they were not so precious or good enough to be in a gallery. They were merely something I would like to call glorified furniture, and it is quite possible they were left in Berlin and that they were not treated as carefully, and moved as carefully, as the others.

Q. What would you estimate the entire collection to be worth?

A. That is almost impossible to determine. That depends very much on the market, and that is why it was never estimated. The only thing that was ever estimated was the value of some certain pieces. Just to give you an idea about that: once a picture was offered to me in Holland for 3,000 guilders. In the course of the years it was offered to me a total of seven times, and the last time it was offered to me the price was 45,000 guilders. That is because other people would offer prices for the same picture. It is impossible to even estimate the value of some of the pieces I had. For instance, the Storzing Altar could never have been estimated. It depended very much on who was interested in it, and at what time. Just to give you an example, if I wanted to sell something by Lucas Cranach the first man might offer 50,000 marks; the next man might have Lucas Cranach as his particular hobby, and he might offer 100,000 marks. Then somebody else would be interested in the object as such, but not to a greater extent than 10,000 marks, and that is why it is impossible for me to estimate the value of the total collection. I really don't even know the extent of my collection anymore. I only remember the most important objects.

Q. I think you testified on Saturday that none of these objects were ever in fact turned over to the Government. Is that correct?

A. Yes. That is correct. I couldn't hand it over to the Government because who was there to act as a representative of the Government? According to our Constitution it was quite sufficient if I informed the Fuehrer of the fact that I had certain objects and gave the Minister of Finance notice to the same effect. As it was, the gallery, as such, was never intended to be handed over to the Government after it was built. It was my intention to hand it over to the people, and the way this would have been effected is that at a certain date it would have been said in a communique, "Goering, on such and such a date has decided to hand over this gallery as a gift to the German people." If you look at it this way, I was the Government myself. Just to show you how this works, for instance, there was an exhibition of the work of living artists, each year in Munich, and the Fuehrer had expressed the wish that all the Ministries should purchase some of those pictures in order to support the artists, and that happened. Then these pictures were taken and put into the ministries, or into the houses that are the official residences of the ministers. Well, now, as such they were Government property. However, they actually were located in the ministries, or houses of the ministers.

Q. But in point of fact, none of these objects were ever given to the German people?

A. How could this be done? The gallery had never been built yet, and all this was to happen after the war.

Q. But, I say, it never happened.

A. That is quite clear. That is quite impossible.

Goering's Estimate of His Income

Q. Up to the end of the war, what would you estimate your total personal income to have been?

A. You mean my monthly income?

Q. Yes. Monthly or yearly.

A. My income was made up first by my salary; second it stemmed from the special fund that I received as Reich Marshal.

Q. How much did you receive for each of these?

A. The two of them together amounted to about 28,000 marks a month. In addition to this came free residence, and all representative functions and matters were being paid for; and this, of course, was variable. Then I derived income from books and articles that I had written. Of course, this was variable, but I would estimate the total sum that I had derived in such a manner throughout the war, as about one million, and maybe one and one half million marks.

Q. What other sources of income did you have? Income from securities?

A. I had other income derived from interest on my capital and securities.

Q. How much would you estimate that to have been?

A. I am sorry that I really can't tell you, because I can't check it. Unfortunately I did not take very much interest in the administration of my own finances. They were left to the secretary, and I don't think that she had enough perspective to do the thing right, and I found out very much later that I had lost a great amount.

Q. How about income from industries in which you were financially interested?

A. I had no financial interest in industry except shares that I had bought as a private person, and I only had those in state factories.

Q. Such as?

A. For instance, there were the Hydrier Works. Any factories that belonged to the State, that is what I am talking about. We were allowed to have shares that represented a financial interest in it.

Q. Then let me ask you again, at what fee you would estimate your total monthly income?

A. That is very difficult for me to say because so many of these things were distributed over so many years. As I mentioned before, I received 28,000 marks in currency per month, and then I would say possibly five to seven thousand marks would be added to that from interest and annuities, and so on, and I would say that I received a total of 35,000 marks in currency each month The sum I mentioned before that I had received as an author, of course, was distributed over many years. This income which I mentioned as a million, and a million and a half marks, has been distributed over this period of time.

Decree Re "Criminal Attacks on Party and State"

Q. Then there was the decree for the execution of the law on the Secret State Police of 10 February 1936?*

A. Yes. This was the same for all decrees. There were laws for their execution.

Q. That decree referred to "criminal attacks on Party and State."

A. Yes.

Q. What did that mean?

A. Several attacks had taken place upon the leaders of the Party, and the Fuehrer wished that not only attacks upon leaders of the State came within their jurisdiction, but that leaders of the Party would enjoy the same protection.

Q. What kind of criminal attacks?

A. I don't remember the particulars about this. Anyway, one thing is clear—that it was the decision of the Fuehrer to make the leaders of the Party, that is, the prominent people in the

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*Document 2107-PS, Vol. IV, p. 732.

Party, in every way the equals of the leaders or prominent people in the State. He had this idea for everything. For instance, a Reichsleiter of the Party had the assimilated rank of a Reich Minister.

Excerpts from Testimony of Hermann Goering, taken at Nurnberg, Germany, 9 October 1945, 1530-1700, by Col. John H. Amen. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; Pvt. Clair Van Vleck, Court Reporter.

Goering's Opinion of Hess's Mental State

Q. Did you think that Hess was telling the truth?*

A. Yes, absolutely. He is completely changed, and I would have recognized him maybe from his looks, but he gives me the impression that he is completely crazy.

Q. You say he seemed to be crazy before he went off on this flight?

A. I wouldn't say outright crazy, but he was not quite normal then, and he was very exalted, so to speak, very exuberant.

Q. Was he any worse at the time when he flew over to England than he had been before?

A. I want to say this, and what I am going to say has got to do with the probable cause of it. In spite of the high position, he had relatively little to do after the outbreak of the war, and his ambition to do things, and being frustrated, may have caused his attitude. It was his wish all the time to do something, and to do something decisive, and this made him very, very nervous. Then he probably also felt that his next subordinate, Bormann, was talking to the Fuehrer and not telling him about it, and that may have added to it. Then he got the idea that he had to do something decisive, that he had to fly to England and bring about peace; in other words, to do something to compensate for this relative inactivity, which was forced upon him.

Early Nazi Operations in Austria

Q. Did you know Theo Habicht?

A. Yes.

Q. Was it the Fuehrer's belief, when he appointed Habicht, that he could win Austria through normal political means?

A. It was the Fuehrer's belief that Habicht was a competent Party man for Austria, but then after the Dollfuss affair, he let him drop very sharply, and he intended to take very strong measures against him, but he just let it be at that.

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* This interrogation was conducted immediately following an interrogation in which Hess had been confronted and questioned by Goering and other of his former associates, in order to test the genuineness of Hess's claimed amnesia. See pp. 1160-1170 of this volume.

Q. Why did Habicht, when he failed to win over the Austrians by normal diplomatic means, resort to terror in order to try to break Austria?

A. He made a report to the Fuehrer and I remember it rather well. I was present. He made some completely false and untrue statements there when he described the situation. He declared to the Fuehrer that within the Austrian Federal Army there was a large component, which had the intention of making a putsch against the government, and thus to prevent the Anschluss. He was always talking about a Standarte Bundesheer, which was supposed to be a society within the Federal Army of Austria, and which was supposed to work with us. It was a fact that this Standarte Bundesheer consisted only of those that had already been dismissed; thus he created a completely false connception in the Fuehrer's mind. The Fuehrer believed it, although he was very skeptical. He made this report in a very deceptive way. We were both very surprised that there was so much momentum in the Federal Army, and it was our opinion that if the Federal Army decided for a putsch, to upset the government, then the Party would find an opportune moment for their intentions. Then, when this whole thing did not succeed, and everything was cleared up, I remember Habicht came again to report to the Fuehrer. It was at the occasion of the Wagner Festivals at Bayreuth, and the Fuehrer had asked for him. He remonstrated with him and accused him of cheating and falsifying reports, and he told him this in no uncertain manner, and then I remember it was either the next day or a few days later that Habicht came to me and asked me whether now he should shoot himself and then I answered him—well, if he had to ask me about it, he didn't have to do it. I remember this moment very well.

It was the Fuehrer's intention, at first, to punish him very strictly, but then he also let this go because he did not want all this to get to the outside and expose the whole thing. Then, very much later later we took charge of the Austrian Government, I remember that I was once asked whether he could get a civil service job in Prussia, and I believe that he got the post of a mayor in some town.

The Dollfuss Murder

Q. The death of Dollfuss was planned in advance, was it not?

A. No, quite the contrary. That was a thing that was most unpleasant to the Fuehrer. This made the whole situation terribly dangerous to the Reich. At that time, Mussolini was against us and he was very well allied with Dollfuss. If I may, I would like to make a remark about the last interrogation that we had about Austria; that is, in this connection.

Q. All right.

A. I was then asked about the march into Austria, why we marched into Austria, and whether the telegram that had been fixed up was to give the external occasion, so to speak. At that time I counseled the Fuehrer very much against the sending of this telegram. On the one side, we could rightly say that the bulk of the Austrian people, and their movement, was on our side and thus it could not be said that their attitude would result in the necessity of sending this telegram, asking us to come there in order to maintain quiet and peace, because we published the fact that the entire Austrian people wanted the Anschluss. On the other hand, I thought it was absolutely necessary that the troops were to march in and I gave you the reason the other day. I was afraid that other states neighboring on to Austria would occupy certain parts of the country. Now, here comes the decisive thing, which I forgot the other day, but talking about all these things in that connection now I can remember it. At the occasion of the Dollfuss assassination, Mussolini mobilized five Italian divisions at the Brenner Pass.

Q. Only two, wasn't it?

A. Possibly he only mobilized two, but he told us five. Those five divisions always stayed in my recollection, and I thought about that very much, so I thought if the question of the Anschluss came up again, it would be better if there were German divisions at the Italian border. In spite of all the friendship that we had with Mussolini, you could never know what kind of an effect the Austrian question would have on him. Then there was also the letter that the Fuehrer wrote to the Duce at the occasion of the Anschluss in 1938. Now, this letter was delivered during the night, before the date of the march into Austria, and I believe it was half past eleven when I was called from Rome and I was told that the Duce had accepted the situation. On the day before, I had given a great dance for all the diplomats, and I thought it would be very practicable, because at that moment I could tell them of the proposed plan for the Anschluss. At that time, the members of the Italian Embassy acted very strangely and very icy, so to speak, and I was glad that the decision to march in had already been taken, and when they then finally got the news from the Duce during the night, that he accepted the situation, the whole thing became very much less tense.

Q. You were acquainted with your ambassador, Dr. Rieth, were you not?

A. Yes, only very slightly.

Q. The evidence shows that Rieth carried on the negotiations for the death of Dollfuss with the ultimate conclusion.

A. Well, if that is so, I must say it is very unfortunate that we didn't have the evidence at the time, for had we had the evidence, we would have acted against Rieth. I can only say—and this is absolutely positive—that the death of Dollfuss was the most unpleasant event that could happen for the Fuehrer.

Q. What is your explanation of the death of Dollfuss?

A. I believe it resulted from the entire revolutionary situation. As far as I remember, his death was effected by some subordinate organs. As I heard at first, it was the intention of the revolutionaries to use Dollfuss as a hostage in order to assure their own get-away. However, two people, who were both very subordinate, and I believe the name of one of them was Planetta, or something like that, finally shot Dollfuss.

Q. He was the person upon whose grave in 1938 you put wreaths for the great celebration where Hess was present; isn't that so?

A. I don't know whether or not I put any wreath down there, but it is a fact that many wreaths were put down there, and that those people who finally had been killed for the assassination were regarded as martyrs and celebrated as such by the Party. It is quite possible that when I did get to Vienna, somebody sent wreaths there for me. However, I don't remember that I did it personally; I don't think that it is possible that I put any wreaths down there in the presence of Hess.

Q. Hess put the wreath on.

A. That is possible. I came to Austria for the first time only fourteen days after the Anschluss. The Fuehrer went there immediately and I stayed in the Reich as his deputy. I was Chargé d'Affaires for the entire Reich.

Q. The Fuehrer made a great speech eulogizing the murderers, didn't he?

A. That I don't remember.

Q. That is what the evidence shows.

A. It is possible.

Q. There was a big celebration?

A. As I say it is quite possible. I am not denying that they were made martyrs by the Party.

Q. If you thought his death was so regrettable, why did you come along later and eulogize the people that were responsible for it?

A. The two things really have nothing to do with each other.

There is no doubt about this, that Dollfuss' death made the greatest political difficulties for Hitler, and Dollfuss' death, as such, hadn't been necessary and it actually did great damage for many years. However, here was a case where two men had been executed by the Austrian government and the Austrian Nazi Party had pictured them as martyrs. What sense would there be to upset this after they had already been martyrs? That did not mean that the act of killing or the act of assassination of Dollfuss had been approved. That was the thing that the Fuehrer had against Habicht, among other things. The Fuehrer knew exactly just what relationship there was between Dollfuss and the Duce. Then the death of Dollfuss brought the relationship between Germany and Italy and Austria in this whole connection into the greatest conflicts. You will remember the speech that the Duce held. At that time, the wife of Dollfuss was paying a personal visit to the wife of the Duce, and thus it was a very unpleasant situation.

Q. You don't know what negotiations may have been carried on by Dr. Rieth with respect to the murder of Dollfuss, is that correct?

A. No, I don't know, and I don't really believe that Rieth, who did not belong to the Party, entered into any negotiations for the assassination of Dollfuss.

Q. It may have been so without your knowing it; right?

A. It is possible, but Rieth was a diplomat and I think it is out of the question.

Q. Do you think that diplomats don't conduct such negotiations?

A. Not in general.

Von Papen's Mission In Austria

Q. Are you familiar with the instructions which Hitler gave to von Papen?

A. Yes, in substance. I wasn't there when he gave them to him, but I know just about the thoughts.

Q. Papen did go to Vienna and secure, first, an agreement between Schuschnigg and Hitler?

A. The immediate reason for Papen's dispatch to Vienna was that he was to pacify the turmoil that had been created by Dollfuss' death. You must remember that Papen was a very prominent politician, and that he also was a Catholic. He moreover was an ambassador who did not belong to the Party. There was one point in his favor for this assignment. The second one was that he was a prominent Catholic and he came to a Catholic country. Moreover, as a third point, he had been Vice-Chancellor until then and thus he had held a very high position, and that was showing a certain courtesy to these people. Moreover, Papen was not put under the authority of the Foreign Minister, but directly under the Fuehrer.

Q. What were the initial instructions from the Fuehrer to Papen?

A. Papen was to effect a general appeasement there. He maintained very good relations with Cardinal Innitzer and the Church in general, and that was one thing. When was the Dollfuss affair? 1934?

Q. July 25th, 1934.

A. The basic instructions that he received were to effect a general appeasement of Austria. Then, in the course of the further events, he received instructions to see that Austria would approach Germany more and more in economic aspects and also in aspects of internal politics.

Q. He did secure an agreement between the Fuehrer and Schuschnigg; right?

A. Yes, but that was in the year 1938. That was very much later—1937.

Q. No, '36, July 11, 1936.

A. Oh, I thought of the Berchtesgaden agreement. There were two agreements.

Q. We are talking about the initial agreement.

A. Yes.

Q. What was the substance of that agreement?

A. I don't know exactly just what the substance of it was. That was the same for the first agreement and for the second agreement; although I was very much interested in the Austrian affair, strangely enough, I was not consulted that time.

Q. You know that Hitler did live up to the terms of that initial agreement, don't you?

A. Well, you have to call back the conditions of the agreement to my memory a little more, and maybe I will remember a little more about it. I know just a little more about the second one though.

Q. The second one was later on.

A. Personally, I can remember the second agreement better than I can the first agreement, only if you will just give me an idea about it.

Q. As a matter of fact, it was the failure on the part of the Fuehrer to live up to that agreement that led to the meeting at Berchtesgaden, wasn't it?

A. As far as I remember, both parts did not live up to the terms. The situation was such.

Q. Anyway, the Fuehrer didn't live up to the terms.

A. Yes, and the other one didn't either.

Q. In fact, he never intended to live up to the terms at the time, did he?

A. That I don't know, because I did not participate in that agreement. I would have probably counseled against any agreement. It was always my policy to demand the Anschluss without any reservations. When the English Foreign Minister visited me in October 1937 or the beginning of November 1937, I told Lord Halifax explicitly, and in the presence of the English Ambassador, that the Anschluss of Austria was an integral part of German policy and I told him that nothing short of a total Anschluss would suffice.

COL. AMEN TO THE INTERPRETER: Will you read this to him?

THE INTERPRETER: "The Reich government recognizes the constitutional sovereignty of the federal state of Austria in the sense of the Fuehrer's and Reichskanzler's statements of May 21, 1935. (These statements run: Germany has neither the intention nor the desire to interfere in internal Austrian affairs, or to carry through an annexation or Anschluss of Austria. But I believe that no regime, which is not anchored in, supported, and desired by the people, can last.)"

A. I believe that he said this in a speech in the Reichstag and it was the difference between me and the Fuehrer that he would do things like this, because the Anschluss of Austria was absolutely an integral point, I may even say the first point of our entire foreign policy. I remember this speech very well, because I got very frightened by it.

Q. In any event, that part of the agreement was not lived u to by the Fuehrer, right?

A. No. It wasn't lived up to, and it couldn't be lived up to.

Excerpts from Testimony of Hermann Goering, taken at Nurnberg, Germany, 10 October 1945, 1500-1655, by Col. John H. Amen. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; S/Sgt. William A. Weigel, Court Reporter.

Reasons Why Schacht Left Economics Ministry and Reichsbank

Q. What were the real reasons for Schacht's departure from the Ministry of Economics in 1937, and from the Reichsbank in 1939?

A. As far as the Ministry of Economics was concerned, there were strong differences between Schacht and the Ministry for Agriculture.

Q. On what grounds?

A. I don't remember any particulars about it, but I do remember that the Minister of Agriculture and Food, Darre, came to me repeatedly and told me that he could no longer work together with Schacht in financial and economic matters. Also, the relationship between the Fuehrer and Schacht had become considerably worse.

Q. From what causes?

A. I really never understood those reasons, but I believe that the Fuehrer thought that Schacht did not believe wholeheartedly in his plans. Also the Party constantly attacked Schacht very strongly.

Q. Do you mean in the Fuehrer's plans for aggressive warfare?

A. No, just his plans generally. The Fuehrer charged Schacht with carrying out a great many financial plans, and Schacht did not feel capable of carrying out these plans. He was very pessimistic and sceptical at the time, and this was together with the attacks that were being made upon him by prominent functionaries of the Party; that is, they came to the Fuehrer and complained about it. As I have explained before, his leaving the Reichsbank must be brought into connection with the differences he had with the Reichminister for Finance. I believe that at the time he refused to advance the money for the last of the month, which was the usual practice and carried out everywhere. I believe that he picked this as a reason because he wanted to get out.

Q. Would there be any truth in the suggestion that he got out because he was opposed to vigorous war measures?

A. I don't know just why he wanted to get out.

Q. Well, did you see any indications that he was opposed to vigorous war measures?

A. Yes, Schacht was a very careful man.

Q. But you wouldn't say that that was the reason why he got out.

A. He made the suggestion that I was to become the Commissioner for Raw Materials and Foreign Currency. He had the idea that in that position I could give the Minister for Economics and the President of the Reichsbank valuable support. Moreover, in that capacity I should furnish him protection against the attacks that were continually made on him by members of the Party. Moreover, he was very outspoken in the suggestion that he and Blomberg made, that I was to be put in charge of the Four-Year Plan. However, the idea that Schacht had there is that I myself did not know very much about economy, and that he could very well hide in the protection of my broad back and thus ward off those attacks.

I believe that these really are the deep reasons for his leaving, but, of course, they are only my personal opinions. He found out that after a certain time, when I was responsible for these things, I insisted on expressing my opinion on them and taking action. He did not like this, and consequently he became an opponent of the Four-Year Plan. Then there were a number of rows between his people and my people. Then after he lost the Ministry for Economics, he also found that he was no longer the complete boss of the Reichsbank, because in the last resort I had some say in what should happen to foreign currency and the gold reserve, and he did not like that at all. I imagine that he had the idea that that lowered his standing, and he felt very well that he no longer completely dominated the Reichsbank affairs. As I said, these are my personal reasons. As I mentioned before, the actual occasion on which I made him leave the Reichsbank was something that he really artificially created.

Q. Did you disagree with Schacht on the question of the desirability of the production and expansion of the export-import trade as a means of rearmament?

A. I don't think that he could have had a different opinion, really, because my main task in connection with the Four-Year Plan was fixed by a memorandum which I received from the Fuehrer on that subject. My main task was to create an autarchy for Germany, so that she would be agriculturally and economically independent. We might have differed in certain methods. However, all you could do was to buy extensive quantities of raw materials under the most favorable conditions by import, and then export other things in exchange for them. In other words, that was all either one of us could have done about it.

Q. Now, after Schacht lost these two positions, did he continue to have any say in matters of government policy?

A. No. He still was a member of the Reich Cabinet, but as far as I remember, the last time that it was called for a session by the Fuehrer was in 1937.

Q. He remained a Minister without Portfolio?

A. Yes. We had quite a large number of those.

Q. Did he meet with Hitler from time to time after he lost those positions?

A. I believe just a few times. He appeared for the different sessions of the Reichstag, and he would sit on the government bench. That was his main activity as a member of the government.

Excerpts from Testimony of Hermann Goering, taken at Nurnberg, Germany, 11 October 1945, 1045-1130, by Col. John H. Amen. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; Pvt. Clair Van Vleck, Court Reporter.

Goering's Relations with Schacht

Q. How were your personal relations with Schacht?

A. At first it was very good, then later when I was charged with the Four-Year Plan, I had all kinds of conferences with him, but on the whole it was good.

Q. It got worse, rather than better, as time went on?

A. Yes.

Q. Did actual friction develop around the time when he got out of office?

A. There was some friction concerning the methods he applied, but I don't remember that there was any especial friction, just when he left the Reichsbank. It may have been so when he left the Ministry of Economics, that there was some difference about the methods employed by the Four-Year Plan.

Q. How was the relationship at that time between the Fuehrer and Schacht?

A. The relationship between Hitler and Schacht was especially good for many years. However, from 1937 on, it cooled off progressively and finally deteriorated very badly.

Q. I think you said yesterday that after 1939 Schacht had very little to do with matters of policy?

A. Yes.

II. RUDOLF HESS*

Excerpts from testimony of Rudolf Hess, taken at Nurnberg, Germany, 9 October 1945, 1045-1215, by Col. John H. Amen, IGD, OUSCC. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; Pvt. Clair Van Vleck, Court Reporter.

Hess Claims Loss of Memory

Q. Do you prefer to testify in English or in German?

A. In German.

Q. What is your full name?

A. Rudolf Hess.

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*See Vol. I, pp. 97-113, for medical reports, motion by defense counsel, and statement by Hess concerning his memory.

Q. What was your last official position?

A. Unfortunately, this already comes into a period which I cannot remember any more. I am suffering from loss of memory, and the doctor has told me that this is a frequent occurrence, especially in time of war, but that there is some chance that my memory will return. There are many cases where I cannot even remember what happened 10 or 14 days ago.

Q. What period is it that you cannot remember?

A. Anything longer than, say, 10 or 14 days ago. It has frequently happened that I met gentlemen I could not even remember their faces when I saw them again. It is terrible. Yesterday I was told by a doctor, or maybe it was a clerk over there, that it happens sometimes that people don't even know their own names any more, and he said that possibly by a shock it would suddenly all return again. This is terrible for me, and everything depends on it for me because I will have to defend myself in the trial which is going to come soon. There is nobody to defend me if I cannot do it myself.

Q. You mean that you cannot even remember what your last official position was in Germany?

A. No. I have no idea. It is just like a fog.

Q. Do you remember that you used to be in Germany?

A. Well, I think that that is self-understood, because I have been told so repeatedly, but I don't remember just where I was and not even in what house I was. It has all disappeared. It is gone.

Q. How do you know that any kind of proceeding is coming up, as you say?

A. This trial has been talked about all the time. I have seen it in the newspapers, and it has been mentioned to me, and even yesterday I was told about it. Then when I was brought down here I was told that I was brought down here for the trial in Nurnberg. Such a big event, naturally, has made an impression on me and I can remember it. I am thinking of it all the time at night.

Q. But you don't know what the proceeding is for?

A. I have no idea. I don't even know whether I was told what I am accused of. I know that it is a political trial. That has been said all the time, and also war criminals have been mentioned. Perhaps I had even been told just what I am accused of, but I don't remember.

Q. Do you remember how long you have been in England?

A. No, that I don't remember.

Q. Did people question you while you were in England?

A. Certainly not during the last 8 or 10 days. I don't remember anything that is further back than that, but during the last 8 or 10 days I was completely alone. When we left there, I was told that I had been at that place for a long time.

Q. When did your memory go away?

A. The doctor told me yesterday that it has been this way ever since July.

Q. But you don't know yourself?

A. No.

Knowledge Without Memory

Q. Have you ever seen this book before? (Passing book to witness.)* Suppose you read these first few pages, and see if that means anything to you.

A. That is I, myself (pointing to the printed signature of Rudolf Hess).

Q. Will you read this portion? (Indicating).

A. This is good, and there is no question about it. However, I cannot remember that I ever wrote this.

Q. Suppose you look through the book and see if that doesn't mean anything to you.

A. My name appears below all these things. There is no question about that.

Q. Don't you know what they are?

A. No. I would have to look at it first.

Q. Look at it.

A. Well, if you will tell me—

Q. Do you know what laws are?

A. Yes; that is self-understood.

Q. Don't you remember having anything to do with the enactment of various laws in Germany?

A. Do you mean I, myself?

Q. Yes.

A. Enacted laws?

Q. Yes.

A. No trace of it. According to this, I must have—well, how shall I say—I must have had a very prominent position.

Q. That is right. Doesn't that help you to remember what that position was?

A. No. Well, what I read, I read, but it doesn't mean anything more than just what it says there.

Q. Do you know who Jews are?

A. Yes. They are people—a race.

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* See documents 3179-PS, 3182-PS, 3183-PS, Vol. V, pp. 916-920.

Q. You didn't like them very well, did you?

A. The Jews, no.

Q. So you had some laws passed about the Jews, didn't you?

A. If you tell me, I have to believe it, but I don't know it. It is terrible.

Q. You don't remember having anything to do with any laws about Jews?

A. No.

Q. Will you look at this portion of the index? Will you just read that part and see if that helps you to remember it at all?

A. (Examining document). That is self-understood. It says here, and I understand what it says.

Q. Didn't you have something to do with those Jews that are referred to there?

A. Well, that is very apparent, yes, but I can't remember it.

Q. You don't remember anything about it?

A. No, nothing at all. It is completely blank.

Q. Isn't this whole book full of laws, for which you were responsible, and isn't that why your name appears on the front?

A. Yes, that is apparent, of course.

Q. Still, you don't remember anything about them?

A. No, not at all.

Q. It is just as if it were a book written by somebody else?

A. If I did not know my own name, and if my name did not appear below this introduction, I would believe, without reservation, that somebody else was the author.

Q. How do you happen to remember your name? Did somebody tell you, or did you remember that?

A. I had to put my signature below documents all the time, and then that has been stamped on my brain, so to speak, from my youth, but the doctor ought to know about that. I don't know how to explain it, but it is a fact that I know I am Rudolf Hess.

Q. Do you remember the Fuehrer?

A. Yes. During all that time I had a picture of him hanging in my room in front of me.

Q. Do you remember being a member of the Fuehrer's secret cabinet council?

A. I have no idea.

Q. Don't you remember a lot of meetings that you used to attend with the Fuehrer?

A. No; not at all.

Q. What do you remember about the Fuehrer?

A. That he was the Chief of the German State.

Q. What else do you remember about him?

A. The Fuehrer was the leader, and he was a personality that excelled everybody in every German's mind.

Q. What else do you remember about him?

A. I know that he is dead.

Q. How did you learn that?

A. Anyway, I know that. I don't know where I learned it.

Q. You don't remember ever talking to him?

A. No.

Q. Do you think you have ever done so?

A. According to this, I must have talked with him. If somebody constantly issues laws or decrees in his capacity, as the Deputy to the Fuehrer, then he must have talked to him.

Q. Do you remember that you were a Deputy to the Fuehrer?

A. No. I see that from this again. (Pointing to book)

Q. But you have no recollection of it?

A. No.

Q. Why don't you like the Jews?

A. If I had to explain that to you in detail, I am again facing nothing. I only know that this is deeply within me.

Q. How do you remember that you don't like them?

A. When the name "Jew" is mentioned, something stirs in me, which is dislike, or that they are not sympathetic to me, or rather that I have no sympathies for them. I cannot explain it in detail.

Q. You cannot recall any reasons why you shouldn't like them?

A. No.

"Thought Association" But Not Recollection

Q. Do you remember that there was a war?

A. Of course, I know that there was a war.

Q. Between whom?

A. Anyway, I know that the Americans were one enemy and the English were another one.

Q. Do you remember any others?

A. Japan was in the war, but she was on our side; not our enemy.

Q. Anybody else?

A. I wouldn't know, not at this moment.

Q. How about the French?

A. The French? That is quite possible. I don't know of any details, but I know that there were the French, that the French were in the war and also the Belgians. Yesterday we traveled through Brussels, and there we saw the air forces and the armed forces, and also the damage that had been done to buildings.

Q. Was France an ally of yours, or was France fighting against you?

A. No; I don't believe that France was allied to us. Of course, they were our enemies.

Q. How about Russia?

A. Of course, Russia, yes, they also were our enemies.

Q. When did the war start?

A. That I don't know.

Q. Did Germany start the war, or one of these other countries?

A. That I don't know.

Q. You don't remember how the war got started?

A. No.

Q. Do you know whether it is ended or not?

A. Yes. The war is finished.

Q. How do you know that?

A. I have read the newspapers during the last day, and it is quite evident from that.

Q. Do the newspapers make sense to you when you read them?

A. Partly yes and partly no.

Q. How long were you in England?

A. I have no idea.

Q. Was it for a long time or short time?

A. I was told that it was a long time, that was in the last few days, just before we left there.

Q. How did you get there in the first place?

A. To England? I don't know.

Q. Why did you go to England?

A. I don't know.

Q. What happened to your family?

A. I don't know.

Q. Did you have a family?

A. Yes. I had a wife and a child.

Q. How do you happen to remember that?

A. I have the photos of my wife and my little boy hanging in front of my eyes alongside that of the Fuehrer all the time.

Q. Do you know what their names were?

A. My wife's name is—well, I don't even know that.

Q. How about your child's name?

A. I don't know that either.

Q. A boy or a girl?

A. Boy.

Q. What is a war criminal?

A. I would like much more to ask you this question.

Q. You mean, you never heard the expression before?

A. Yes, of course, I have heard it before, but in spite of that I am not absolutely certain about just what this means.

Q. Do you think it is a crime for a country to commit aggressive war against other countries, without provocation?

A. That will depend on the conditions such as they existed. I cannot either say yes or no. That depends on the case.

Q. I just said in general.

A. I would say that if a country starts a war, without a real cause for war; that is, one which is not internationally recognized as a reason for war, and thus bring war to another country, it is criminal. There is no question about that.

Q. That is what a war crime is, isn't it?

A. Yes.

Q. Do you believe that Germany was justified in conducting this recent war?

A. I cannot give you an answer to that, because the circumstances are—not any of the circumstances are in my memory.

Q. So perhaps they were wrong, and perhaps they were right; is that it?

A. Yes. That depends entirely upon the situation, which I don't know.

Q. When did you first learn that the Fuehrer was dead?

A. That I don't know.

Q. Do you know whether he is dead or not?

A. Well, that is a term to me, so to speak. I don't know why it is a term, but if I looked at the picture of the Fuehrer, which was hanging in front of me, I knew that he was dead.

Q. You knew he was dead from looking at his picture?

A. That was a thought association, just that the Fuehrer is dead. That is all.

Q. Where did you get that thought?

A. That I don't know.

Interrogation of Rudolf Hess, taken at Nurnberg, Germany, 9 October 1945, 1430-1510, by Col. John H. Amen, IGD, OUSCC. Also present: Hermann Goering, Dr. Karl Haushofer, Franz von Papen, Ernst Bohle (for the purpose of identification); Pfc. Richard W. Sonnenfeldt, Interpreter; Pvt. Clair Van Vleck, Court Reporter.

*First Reunion with Old Friends and Associates**

Col. Amen: Your name is Rudolf Hess?

Rudolf Hess: Yes.

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* This confrontation was made in order to test the genuineness of Hess' claimed amnesia.

Col. Amen: Will you look over here to the right to this gentleman here.

Rudolf Hess: At him? (Pointing to Hermann Goering)

Col. Amen: Yes.

Hermann Goering: Don't you know me?

Rudolf Hess: Who are you?

Hermann Goering: You ought to know me. We have been together for years.

Rudolf Hess: That must have been the same time as the book that was submitted to me this morning. I have lost my memory for some time, especially now before the trial. It is terrible, and the doctor tells me that it is going to come back.

Hermann Goering: Don't you know me? You don't recognize me?

Rudolf Hess: Not personally, but I remember your name.

Hermann Goering: But we talked a lot together.

Rudolf Hess: We were together; that must have been the case. That must have been so. As the Deputy of the Fuehrer all the time in that position, I must have met the other high personalities like you, but I cannot remember anyone, to the best of my will.

Hermann Goering: Listen, Hess, I was the Supreme Commander of the Luftwaffe, and you flew to England in one of my planes. Don't you remember that I was the Supreme Commander of the Luftwaffe. First I was a Field Marshal, and later a Reichsmarshal; don't you remember?

Rudolf Hess: No.

Hermann Goering: Don't you remember I was made a Reichsmarshall at a meeting of the Reichstag while you were present; don't you remember that?

Rudolf Hess: No.

Hermann Goering: Do you remember that the Fuehrer, at a meeting of the Reichstag, announced in the Reichstag that if something happened to him, that I would be his successor, and if something happened to me, you were to be my successor? Don't you remember that?

Rudolf Hess: No.

Hermann Goering: You don't remember that? We two discussed that very long afterwards.

Rudolf Hess: This is terrible. If the doctors wouldn't assure me time and time again that my memory would return some day, I would be driven to desperation.

Hermann Goering: Don't you remember that I visited your family and your wife? I saw you and your wife together repeatedly. You also visited my family with your wife.

Rudolf Hess: This is all a fog, behind which everything has disappeared; everything that happened in that time.

Hermann Goering: Do you remember that I lived just outside Berlin, in a great house in the forest, at Karinhall; don't you remember that you came there many times? Do you remember that we were together at Obersalzberg with the Fuehrer, where you have been for years, near Berchtesgaden?

Rudolf Hess: I have been there for years?

Hermann Goering: Yes, for years, even before the acquisition of power.

Rudolf Hess: That means nothing to me.

Hermann Goering: Hess, remember all the way back to 1923. at that time when I was the leader of the SA, that you led one of my SA troops in Munich already for me before 1923? Do you remember that we together made the putsch in Munich?

Rudolf Hess: The putsch in Munich was already mentioned this morning.

Hermann Goering: Do you remember that you arrested the Minister?

Rudolf Hess: I arrested the Minister?

Hermann Goering: Yes.

Rudolf Hess: I seem to have a pretty involved past, according to that.

Hermann Goering: I am just calling the most glaring things to your attention. Do you remember the beginning of the year 1933. and that we took over the government then, and that you got the central political office from the Fuehrer, and that we discussed it for a long time?

Rudolf Hess: No.

Hermann Goering: You also told me that you wanted to become a member of the government, and I told you that I would try to help you. Do you remember that you moved to the Wilhelmstrasse, into the palace which really belonged to me, as the Prime Minister of Prussia, but I enabled you to live there?

Rudolf Hess: I don't know.

Hermann Goering: I visited you many times, and I handed it to you so you would have a house in Berlin. I turned the house over to you for your benefit.

Rudolf Hess: I have been told that everything will come back at one time by a shock.

Hermann Goering: Just a moment. Do you remember Mr. Messerschmitt? You were well acquainted with him. He constructed all our fighter planes, and he also gave you the plane that I refused to give you, the plane with which you flew to England. Mr. Messerschmitt gave that to you behind my back.

Rudolf Hess: No; that is all black. That is all black. That is all blacked out. It is all beyond 14 days, and everything then I have a slight memory, and nothing exact. They told me that people who suffered heavily in the war would get attacks like that.

Hermann Goering: Do you remember that the war started—

Rudolf Hess: I know that there was a war, but I don't know how it came about.

Hermann Goering: Do you remember that you flew in a plane, you yourself, in this war, flew to England?

Rudolf Hess: No.

Hermann Goering: You used a Messerschmitt plane. Do you remember that you wrote a long letter to the Fuehrer?

Rudolf Hess: About what?

Hermann Goering: What you were going to do in England, that you were going to bring about peace.

Rudolf Hess: I have no idea of it.

Hermann Goering: I have come to the end. I cannot ask him any more.

Col. Amen (to Hermann Goering): All right. You move over here. (At this point Dr. Karl Haushofer enters the room.)

Rudolf Hess (to Dr. Karl Haushofer): Pardon me, but I really don't know who you are.

Dr. Karl Haushofer: Rudolf, don't you know me any more?

Rudolf Hess: I don't know you.

Dr. Karl Haushofer: I am Haushofer.

Rudolf Hess: Are we calling each other by our own first names?

Dr. Karl Haushofer: We have called each other by our first names for 20 years. I saw your family and your child, and they are well.

Rudolf Hess: I was asked about your name today, and I don't know you.

Dr. Karl Haushofer: I saw your family, and your boy is nice. (At this point Dr. Karl Haushofer and Rudolf Hess shake hands).

Dr. Karl Haushofer: May I shake your hand? Your boy is wonderfully grown. He is 7 years old now. I have seen him.

Hermann Goering: (to Dr. Karl Haushofer): Tell him again that you have known him for 20 years.

Dr. Karl Haushofer: We have known each other for 20 years.

Rudolf Hess: In order to calm down an old friend, I can only assure you that the doctors tell me that my memory will all come back to me. I can't remember you. I just don't know you, but it will all come back to me, and then I will recognize an old friend again. I am terribly sorry.

Dr. Karl Haushofer: I am sure that it will come back again. Anyway, I can tell you that your son is very well. I saw him. He is a nice boy. And I said goodbye to him under the oak, that has your name, which you yourself chose, that is on Harzhimmelhof, where you were so many times. Don't you remember that there was the view on the Zugspitze and the branches of the trees that hung low down?

Rudolf Hess: All that doesn't mean a thing, it doesn't mean a thing.

Dr. Karl Haushofer: Don't you remember Heimbach, where you were so long, where you lived so long?

Rudolf Hess: This is very peculiar. I don't know you. I want you to know how this could happen. All I can say is that it has all gone away. I don't know that it will come back.

Dr. Karl Haushofer: I am sure it will come back. I have known such cases with old soldiers. I have seen many such cases. Your whole memory will come back to you almost with one shock. You have got to have hope that the same thing will happen to you. I can see how those 4 years have worried you. Rest assured that it will come back. We have been friends for 22 years. You were in our University to become a doctor. That is as true as that your memory will come back. You will see that it will come back. I also see the light in your eyes like in the old days. Best of all, I know that your wife and your son are well on the farm, and that your boy has grown, has developed into a fine young man.

Hermann Goering (to Dr. Karl Haushofer): Please mention the name of the farm itself to Hess.

Dr. Karl Haushofer: The Harzhimmelhof. And then from the Harzhimmelhof we traveled by car into the country.

Hermann Goering: Do you know that you lived in Munich, Hess?

Rudolf Hess: No.

Dr. Karl Haushofer: Don't you know where Munich is?

Rudolf Hess: Of course, I know it is a town.

Dr. Karl Haushofer: Don't you remember the flower beds with the waterflowers? It is all still there.

Rudolf Hess: I don't know anything about waterflowers. It may be right, but I don't remember it.

Dr. Karl Haushofer: It is like that. Just imagine, your little boy, he has grown so high (indicating). He is 7 years old, and he looks half like you and half like his mother.

Hermann Goering: (To Rudolf Hess): Do you remember your boy?

Rudolf Hess: Of course, I do remember them, because I looked at a picture of my wife and my boy all the time. It stays in my memory.

Dr. Karl Haushofer: Your boy is this tall (indicating).

Rudolf Hess: He is not a small boy?

Dr. Karl Haushofer: Like yourself, he is a big boy, and he is 7 years old now. He is going to school and he is a wonderful little man. He is well-developed, and he is well taken care of, just as well as it is possible. I saw them two weeks ago. And I said goodbye to him under the oak, which you yourself chose.

Rudolf Hess: Of course, that is long ago. My memory for that period of time is gone.

Dr. Karl Haushofer: It will all come back. How far back can you remember?

Rudolf Hess: Possibly 10 days or 14 days, but I don't know anything further back than that.

Dr. Karl Haushofer: You wrote me a letter one time, by devious routes, which got to me finally, and you wrote to me about the long walks that you were taking, and you told me about the hay and the smell of the flowers, and that you were allowed to take walks of 2 hours' duration; that you had an honor guard. That made me and your wife very happy. That convinced us that you were treated well. In the last letter that you wrote, it already contained the sad line that says "I am beginning to lose my memory. Recollections leave me."

Rudolf Hess: How long ago was that?

Dr. Karl Haushofer: That must be about three-quarters of a year ago now.

Rudolf Hess: Three-quarters of a year?

Dr. Karl Haushofer: You said, "My recollections are starting to leave me. I cannot even imagine my son any more, and perhaps that is the greatest luck for me." That made us very sad, but we saw, though, and we understood that after 3 or 4 years of solitude and separation, you could not bear up under the impact. Maybe you have that much memory, and maybe you can feel yourself back into your recollection. Don't you remember that we read the story by the Swedish author Selma Lagerlof, together, and there are gifted students mentioned in there who lost their memory, just like you have now, and then with the help of music and poetry, found their memory again. I imagine you could do the same thing.

Rudolf Hess: I don't even doubt it after the doctor told me that. If I didn't believe that, I would have to become desperate.

Dr. Karl Haushofer: You must not become desperate. I remember especially these wonderful letters, which took a long time, but whatever you wrote to your wife, she also sent to me. Thus we remained in contact with your spiritual life and with your feelings, and thus we are completely convinced that your remembrance and your memory can be restored, if we refer to things that we have lived together during a period of 22 years. I know you never were patient in life. Now, you know, I am 76, and you are getting older. You will have to learn to be patient. If you are patient enough, your memory will come back. It will come back more and more to you, and then you will remember your old friends and also your youth, how we circled around the mountains in the Fichtengebirge with an airplane when we flew from Berlin to Munich. Don't you remember how you made the plane circle in the Fichtengebirge because the landscape was so beautiful? Don't you remember that?

Rudolf Hess: No.

Dr. Karl Haushofer: That is where your mother lived, and she is quite well. Don't you remember your old hunting lodge, that is the one that your father built?

Rudolf Hess: Do you have any news from her?

Dr. Karl Haushofer: In her little fine handwriting she has written letters to me, and she always has. Don't you remember the time when I was forbidden to write to your wife and to your mother, and I told the Gestapo they could arrest me, because I would not give up my old friendship for women and ladies, and then it was permitted for me? Thus, your mother and your wife and I corresponded all the time, but probably people put their noses in it.

Rudolf Hess: Why was this supposed to be stopped?

Dr. Karl Haushofer: For some years, that is, after you escaped, I was no more in favor in the official places. When you flew to England, it was believed that your romantic friend was guilty.

Rudolf Hess: I can't look through all this now, especially, if some of my friends had to suffer from it.

Hermann Goering (To Rudolf Hess): Do you remember an institution which we had, and which was called the Gestapo, the Secret State Police; don't you remember that?

Rudolf Hess: No.

Dr. Karl Haushofer: One sticks to his old friends always, even if one gets treated a little badly sometimes. Of course, you know that I spent 6 weeks in Dachau. I didn't write to you, and Elsie didn't either, but those things are borne for the sake of old friendship. I would like to look in your eyes, because for 22 years I read in your eyes, and I am glad to see that a little bit of recognition is coming back into them. I know that you are going to make yourself a little happier now, after long and heavy and hard times. Don't you remember Albrecht, who served you very faithfully? This is my eldest son. He is dead now.

Rudolf Hess: It doesn't mean anything to me.

Dr. Karl Haushofer: It will all come back. I see that a lot of it is coming back to you. Your voice is changing, and your eyes are changing. Recognition is coming back to you.

Rudolf Hess: I am terribly sorry, but at the moment, all this doesn't mean anything to me.

Dr. Karl Haushofer: But sometimes the old gleam is coming back into your eyes, and I think you are recognizing. In those 22 years I had great worry and pain for you.

Rudolf Hess: You are now talking about this flight to England?

Dr. Karl Haushofer: Before flying to England, you told me, by the fireplace, that you wouldn't fly any more.

Rudolf Hess: I told you that?

Dr. Karl Haushofer: Yes; you told me that. (At this point Franz von Papen enters the room.)

Col. Amen (To Rudolf Hess): Do you know that gentleman?

Rudolf Hess: I don't know him. Who is that?

Col. Amen: Did you ever see him before?

Rudolf Hess: No; I never saw him.

Col. Amen (To Franz von Papen): Do you know this gentleman?

Franz von Papen: Yes, I know him.

Rudolf Hess: I am sorry; I don't recognize him.

Franz von Papen: He has changed very much.

Col. Amen (To Franz von Papen): Would you state something to him? That might help him to remember who you are.

Rudolf Hess: Yes, I have changed. I didn't have any chance to shave.

Col. Amen (To Franz von Papen): Speak German to him.

Franz von Papen: I am Mr. von Papen.

Rudolf Hess: That doesn't mean anything to me.

Franz von Papen: I was Vice Chancellor under Hitler's government.

Rudolf Hess: I am very sorry; I don't know you.

Col. Amen (To Franz von Papen): Could you recall any incidents to his mind?

Franz von Papen: We didn't see each other very much in that time, but you must remember that when we made Hitler's government on the 30th of January, that I was the Vice Chancellor in his government.

Rudolf Hess: I don't know that any more. I can't remember anything. I just explained it to these gentlemen. (At this point Ernst Bohle came into the room).

Col. Amen (To Bohle): Do you know this gentleman?

Ernst Bohle: Yes, I do.

Rudolf Hess: There's another gentleman whom I don't know.

Col. Amen: Could you say anything to him that might make him remember you?

Ernst Bohle: Mr. Hess, you know me, of course. My name is Bohle.

Rudolf Hess: That doesn't mean anything to me. There are many gentlemen here who have been introduced and I am supposed to know.

Ernst Bohle: Don't you remember, your brother Alfred, he was with me?

Rudolf Hess: No.

Ernst Bohle: (in English): That is most remarkable.

Rudolf Hess: It is not so remarkable, because the doctors say that all will come back again some time to me.

Ernst Bohle: He has known me for years.

Col. Amen: Are there any special things you can think of?

Ernst Bohle: I have just told him that I know his brother very well, and we were together for quite a long time. I just reminded him of his brother. (To Rudolf Hess): Don't you remember, you know your brother Alfred?

Rudolf Hess: Yes.

Ernst Bohle: He was working with me.

Hermann Goering (To Bohle): Remind him that it was you who translated his letter.

Ernst Bohle: Don't you remember that I translated your letter for you to the Duke of Hamilton?

Rudolf Hess: No.

Ernst Bohle: Don't you remember that you took this letter to the Duke of Hamilton, that it was I who translated it?

Rudolf Hess: I don't remember that. I don't have the least recollection of that.

Ernst Bohle (in English): That is flabbergasting.

Dr. Karl Haushofer: Perhaps he wasn't called Hamilton then. Don't you remember Clydesdale, the young flier who flew over the Himalayan mountains? Don't you remember that he was your guest in Berlin at the Olympic Games, and his name was Clydesdale? His name was Hamilton later. That was the English way of giving out titles; don't you remember that? Don't you remember him?

Rudolf Hess: If I don't recognize a person whom I have known for 22 years, how do you expect me to know Clydesdale?

Dr. Karl Haushofer: If I brought his picture to you, you would probably recognize him again, because we found him very sympathetic at the time. Don't you remember you liked his flying feat when he went over Mount Everest, when he dropped for 2,000 meters, and he barely got away? Don't you remember that that made a very strong impression on you, because it was a terrific aviation feat, especially, that the plane did not break? Don't you remember how he got out before, between the mountains? Don't you remember that was something like where you used to ski, in the Hoellental, but that was 2,000 meters that he dropped. Don't you remember that that left a very deep impression on you? That was a wonderful feat in aviation, going over the highest mountain.

Hermann Goering: Don't you remember that any more?

Rudolf Hess: If I don't remember other things that made a much stronger impression on me, how do you expect me to remember that?

Hermann Goering: Hess, try to remember the following: remember the other war, the earlier war, when you were a young lieutenant in the air forces, as I was, and you were a fighter pilot?

Rudolf Hess: I have no idea.

Hermann Goering: Don't you remember when you flew in France as a fighter pilot? Don't you remember the plane you had, the Fokker plane? Don't you remember the aerial combat that you were in? Don't you remember all that?

Rudolf Hess: No.

Dr. Karl Haushofer: Don't you remember when you got wounded so bad, when you were shot in your lungs?

Hermann Goering: Don't you remember Max and I, who flew together with you? Don't you remember Max?

Rudolf Hess: Nothing, no. I don't remember anything at all. I am consoling myself with the fact that the doctors will probably be right.

Dr. Karl Haushofer: I can show you many common memories that we have. At least, in your eyes, I have the impression that your memory is coming back.

Rudolf Hess: Unfortunately, I don't feel anything of it.

Dr. Karl Haushofer: That may be, but your facial expression very often is stronger than what you really show, and it shows. It shows that your memory is coming back to you when you try to picture those things. It must work like that, because I know of many cases where men have found their memory again in this manner. You have to take single pictures in your memory, possibly impressions of music, impressions that you got from pictures. Use all of that to feel your way back. It is terribly hard to do, but you will find out.

Rudolf Hess: The doctors tell me that it could happen very suddenly if I got very strong impressions.

Dr. Karl Haushofer: That is why we mentioned all those memories to you, because we wonder if possibly one of them might not be strong enough to throw them all back to you. For instance, the moment, don't you remember when we played hide-and-seek between the oaks in the Hartz Mountains? We looked at the rainbow. Don't you remember that any more?

Rudolf Hess: I am sorry that I am facing here an old friend, and that I cannot share those old memories with him.

Dr. Karl Haushofer: They will all come back. They are sleeping somewhere deep down in your subconscious mind. They are all there. These men are all here trying to help you find again your recollection and memory. I cannot show you anything stronger. I can't show you anything stronger than to tell you that I shook the wonderful hand of your little boy, with my own, and the hand of your wife.

Rudolf Hess: I am very glad to hear that.

Col. Amen: We'll continue some other time.

Excerpts from testimony of Rudolf Hess, taken at Nurnberg, Germany, 10 October 1945, 1700-1707, by Col. John H. Amen, IGD, OUSCC. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; S/Sgt. Wm. A. Weigel, Court Reporter.

Advantage or Disadvantage of Loss of Memory Before Trial

Q. When did you get this idea of losing your memory?

A. I don't know. It is a fact that I don't have it now.

Q. I say, when did you get the idea that it would be the smart thing to lose it?

A. I don't quite understand that. You mean to say by that that I thought it might be a good idea to lose my memory and then deceive you like that?

Q. Yes. That is just what I mean.

A. Well, I can only say that that is not true.

Q. Well, it might be very helpful in connection with the coming proceedings, might it not?

A. Well, how could it be helpful?

Q. Well, if you don't remember anything that you were implicated in, it would be more difficult to, perhaps, prove it.

A. Well, take the book, for instance, that you showed me yesterday. I don't see what benefit I could derive from losing my memory there.

Q. Oh, no, but, for instance, when you directed the murder of various people, which you did.

A. I did that?

Q. Yes. So the witnesses say.

A. You mean that because I can't remember it, the witnesses are less creditable?

Q. Oh, somewhat.

A. Or, do you mean because I am lying?

Q. To make people feel sorry for you also.

A. On the contrary, I don't understand that. If I give the appearance that I lost my memory, then people will not like me, and it might influence the trial in such a way that I will get a worse judgment.

Q. Well, all I was interested in was finding out when it was that you got the idea of doing that.

A. Well, if I tell you that I never had any such idea, I can't tell you when I got it.

Q. So you think, for purposes of the trial, you would be better off to have your memory than to have lost it; is that right?

A. There is one thing that I can do in the coming trial, and that is to fight with everything I have for my own skin, and the only instrument I have to fight with is my brain and my memory.

Q. Well, your brain is just as good now as it ever was, isn't it?

A. Well, how does it help me, though, if my brain is working all right and if I don't have any memory; if I can't confront a witness with facts?

Q. Well, it doesn't, of course, if you really haven't got any memory left.

A. Then I must ask the gentleman again why he thinks, or for what reason he thinks, I am doing this. Does he think I am so childish, or so naive, that I think I could improve my position with that?

Q. I'm not quite sure why you are.

A. Yes. Well, that is just it, and that is why I am asking you, because I am much less sure why I should have any advantage from it.

Q. Well, Goering thinks that maybe he can help you get it back again in the near future.

A. I don't know what I can give him. Whether I can give him a decoration or a medal later, I don't know; but whatever I can give to him, I willingly will give to him.

Q. Well, we will let him try.

A. Well, I am only grateful for that.

Q. That is all for now.

Statement by Rudolf Hess, taken at Nurnberg, Germany, 19 October 1945, 1646-1648, by Col. John H. Amen, IGD, OUSCC. Also present: Nancy M. Shields, BCV, Reporter; Pfc. Richard W. Sonnenfeldt, Interpreter.

Insignificance of Indictment

Q. You have now been served with a copy of the indictment in this case, in which you are accused, as the defendant, of the commission of various crimes.

A. Yes.

Q. It is expected that you will continue to be interrogated from time to time unless you expressly object thereto?

A. I believe that, practically, there would be no purpose to that.

Q. Please state whether you have any objection to being further interrogated or whether you consider that your interests will be better protected by refusing to be interrogated further.

A. In my opinion, there is no difference either way because nothing will ever come of it. I read the indictment and to me it is completely insignificant. It does not mean a thing to me. However, if the gentlemen desire to put questions to me, I will be glad to listen to them.

Q. In other words, you have no objection to being further interrogated from time to time?

A. No.

Col. Amen: That is all.

Excerpt from testimony of Rudolf Hess, taken at Nurnberg, Germany, 30 October, 1945, 10:30-12:00, by Col. John H. Amen, IGD, OUSCC. Also present Major Teich, F.C.; Major Kelley, D.M.; Pfc. Ruppert Waare; Pfc. Harold Predland; Pfc. Richard W. Sonnenfeldt, Interpreter; Frances Karr, Court Reporter.

Continual Loss of Memory

Q. What is your full name?

A. Rudolf Hess.

Q. And when you came up to Nurnberg, you brought with you various papers and documents?

A. I do not know that.

Q. You don't know whether you brought any papers and documents with you?

A. No, I don't know that.

Q. You told me the other day that you had?

A. To this gentleman here (pointing to Colonel Amen)?

Q. Yes.

A. I don't even know that I ever saw the gentleman before.

Q. You mean you do not remember that you ever saw me before?

A. No, as a matter of fact.

Q. Do you remember being questioned at all since you have been up here?

A. Well, I must have been interrogated before because among my papers I found the statement, which in substance was something like this: According to yesterday's interview I stated that I didn't want a defense counsel, so I must presume I had been asked, that is, that I could not name one.

Q. Don't you still remember leaving England to come up here?

A. Yes, I know that I came here from England.

Q. And you don't recall what has happened since you have been here, after you left England?

A. Well, I know that I am in a cell over there.

Q. Don't you remember that I have questioned you many times since you have been up here?

A. (To the Interpreter) You mean the gentleman that is confronting me now, putting questions to me.

Q. Yes, right in this room.

A. I don't know that.

Q. Your memory is getting worse instead of better, is that right?

A. I can't say whether it is better or worse, I do not know that.

Q. But you do not remember ever having seen me before?

A. No, to the best of my knowledge I do not remember that.

III. JOACHIM VON RIBBENTROP

Excerpts from testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 15 August 1945, by Col. John H. Amen, IGD. Also present: Col. Howard A. Brundage, JAGD; Lt. Col. Thomas S. Hinkel, IGD; Major Arne Brogger, FA, OCC Representative in Norway; Mr. Thomas Dodd, OUSCC; Jens Hauge, Legal Secretary to Norwegian Prime Minister; Mr. Helge Silvertsen, and Mr. Ivar Follestad, Representatives of the Norwegian Government; T/4 Kurt M. Gutman, Interpreter.

Quisling's Slush Fund

Q. I show you a document dated 15 June 1940.* The part I am interested in is the provision that for the first 3 months after March 15, 1940, 10,000 pounds were to be paid to Quisling to support his efforts. Is that what you read?

A. I recall one thing. Some means were put up for disposition for intelligence purposes in the Scandinavian countries. I can state one thing regarding the Norwegian expedition. The first time I was notified about the Norwegian operation was 36 hours before the landing operations. Neither I nor anybody else in the Foreign Office had any idea that an operation against Norway was to take place.

Q. By whom were you first so notified?

A. The Fuehrer himself. It happened on the afternoon, two days before the invasion.

Q. But you subsequently found out , did you not, that there was an arrangement to pay the 10,000 pounds per month to Quisling?

A. I don't know the amount of money and the receiver of the money. I know, however, that money was put up for intelligence purposes in Scandinavia. I may add here too, that Quisling's name is only known to me slightly.

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* See document 004–PS—The Political Preparation of the Norway Action.

Excerpts from testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 24 August 1945, by Lt. Col. M. I. Gurfein, OUSCC. Also present: 1st Lt. R. Stutz, Interpreter.

Armaments and The League of Nations

Q. [In English] How did you get your job as disarmament commissioner? What was the sequence of events that led to it?

A. [In English] We had left the League of Nations and I remember that the reason why we left the League of Nations was speeches which were then made by the various Foreign Ministers of England, France, and so on. I think it was Sir John Simon for England and for France it was Barthou, I am not quite sure. They made speeches in which they said, I remember, that Germany would have to wait four years and see how politics in Germany went.

Q. Wait four years for what?

A. About disarmament. They were talking about disarmament now. You see the Fuehrer had decided that it was one of the main issues. The Fuehrer wanted absolutely to have equality, you see, equality of rights in every field with the other nations and also, of course, equality in armaments; but he was willing to come to arrangements with the nations about it. I remember well that Hitler was very much concerned about speeches which were made, I think it was by the English representative and the French especially, saying that before Germany could get equality in rights, she would have to wait four years to see how things worked out and then another period of four years would have to pass before anything definite could be done. So this meant for the Fuehrer that before he could come to any equality of rights so far as armaments were concerned, approximately eight years would have to pass. This really made the Fuehrer decide to leave the League of Nations.

I had a long conversation with Mr. MacDonald and Mr. Baldwin. This conversation went very well. I explained to them the situation of Hitler, of Germany, why we left the League, I think. At any rate, we talked about the equality of armaments; and I remember that afterwards we didn't come to any arrangement because I was a private individual then. I told them that Hitler wanted to come to a definite arrangement with Great Britain, that he had advocated that in Mein Kampf since 1918 and this was a profession of faith. Then I remember when I was in Paris that Mr. Baldwin made the speech in the House of Commons, which was a very good speech and which we liked very much, in which he said that somehow the English and the members of the League of Nations had promised equality of rights to Germany and that this equality was to be obtained either by rearming of Germany to the standard of the others, which, of course, was impossible and nobody wanted, or the disarmament of the others to the standard of Germany, which others wouldn't do and therefore would have to come to some arrangements. This was a speech I read then in Paris, which seemed to show to me that the English people were then moving in a direction which would bring, or which would give us the possibility to come to some solution, because Hitler was quite willing, quite prepared to make concessions, a big concession on his part.

Q. About what?

A. About armaments, I mean.

Armaments and the Versailles Treaty

Q. Now I ask you, did the Fuehrer ask you your opinion as to what could be the effect on world opinion, particularly the opinion of England and France, if he marched into the Rhineland?

A. Yes, he did. That is right.

Q. Do you recall how long before the occupation of the Rhineland Hitler had these conversations with you in which he asked you your opinion?

A. It was a question of days, there is no doubt about that. My opinion, at any rate, was that and I also told Hitler that it was absolutely necessary that Germany would have to defend her own country again and that very probably the English and French people would accept that. That was my opinion.

Q. Defend the country? Germany against whom, did you tell Hitler?

A. Well, defend, have fortifications. I mean to defend one's own country, the sovereignty of the country.

Q. The contiguous territory, the country adjacent to the Rhineland is France?

A. Yes.

Q. And at the same time you were circulating around the capitals, Paris and London, to establish some sort of friendship with the French?

A. Yes, but on the basis of equality. I have said that always very openly.

Q. That is what you said before?

A. Yes. I have stated that very openly. I mean on an absolute clear basis of equality and my view always has been, you see, that in order to have equality, we would have to be able to defend our own country, have our own fortifications, and that sort of thing, you see. That always has been my opinion.

Q. In other words, the problem must have been raised, obviously, that this was a violation of the Treaty of Versailles, which had been signed by the plenipotentiaries of the German Government; that must have been discussed by you and Hitler.

A. If you like it that way, it was violation. Yes.

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 29 August 1945, 1030-1200, by Col. H. A. Brundage, OUSCC.

Ribbentrop's Role in Hitler's Accession to Power

Q. [In English] I am interested primarily and for the moment in the early days of the Party and the German Government.

A. [In English] Papen, was, in August 1932, Chancellor to Hindenburg, and some other people tried in August 1932 to make Hitler Chancellor. I didn't participate in the negotiations but I watched them because I got the view during 1932 that the only possibility for Germany to avoid chaos and civil war would be to follow the patriotic front consisting of National Socialists, Nationalists, down right to the central party—that was my view then. People tried in August to bring that about, but Hitler came to Berlin. I then went to see Papen at the instigation of Helldorf and I asked Papen what really had happened. He told me that Hitler had asked to become Chancellor; that Hindenburg wouldn't do that. I told him, of course, that is a different situation, but what about if I went to try and see Hitler and talked with him whether things could be arranged in some way—perhaps in some other way—that he may not become Chancellor; and Papen was quite agreed, quite willing, and so Helldorf had asked me whether I would make intermediate talk and try to bring Papen and Hitler together again; and they prepared an interview for me which was the first time I saw Hitler to meet him personally, in August 1932, at the Berghof. I had a lengthy discussion with him, and I saw that Hitler was very disappointed and had a great distrust of von Papen. I tried to eliminate that, but the essence of my whole situation really was that I found that it was practically useless conversation, because I could not eliminate this distrust of Hitler's; and I went away, telling the Fuehrer that I would try as far as I could to get to Papen again to see him or come into communication again. Meantime, I think Hitler had met Papen in the house of Baron von Schroeder and they had a talk there,* and I don't know what happened there because I was not a party to it. About a week or ten days later, it must have been, I was approached whether I would not try again to bring Hitler and Papen together, and so I did. And that meeting at my house—I think it was two or three times during January, and I believe that these conversations at my house have contributed to the fact that later on the Hitler Government was formed. I personally did not take part in the material side of the discussions, but my activities as intermediary were only the fact to put my house at their disposal, to bring them together, and let them discuss.

Ribbentrop's Loyalty to the Fuehrer

Q. Do you feel that you have an obligation to the German people to historically set forth, not only the good things, but the bad things, for their education in the future?

A. That is a terribly difficult question to answer.

Q. Does that counterbalance the loyalty you feel toward the Fuehrer?

A. I do not want to stand before the German people as being disloyal to the Fuehrer.

> *Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 29 August 1945, 1400-1630, by Col. Howard A. Brundage, IGD. Also present: T/5 Adolf I. Mayer, Interpreter; S/Sgt. Horace M. Levy, Reporter.*

Hitler's Views on Anglo-German Friendship

[Interrogation continued in English language from morning session.]

A. I may point out that still, about a week before his death, the Fuehrer had again pointed out to me the necessity of Anglo-German friendship, and has to this moment given me a sort of—well, we still thought then there might be possibilities of some negotiations, or some meetings of the statesmen, or something, some sort of a message which I should give to them when I saw them. This was on the 22d or 23d of April, when the Fuehrer spoke to me for the first time that the war was lost. He never spoke of it before. It was the 22d or 23d of April.

Q. You mean of this year?

A. Yes, of this year. I mean, it only shows you how he really stuck to his fundamental ideas. He came back to that again, about the tremendous necessity of these two countries coming to some sort of an arrangement.

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* See statement of Kurt von Schroeder, Vol. II, pp. 922–924.

I may say that also—this may be just interesting for historical purposes—that also during the war, after Dunkirk, I was sitting together with Hitler in his headquarters in France, and I asked him what he thought should now be done with Great Britain, what we could do; and I proposed whether we could not make a quick peace, and the Fuehrer was enthused about the idea himself. And I asked him whether I should sketch out some sort of plan or something. He said: "No, I shall do that myself. It will be only a few points, a very few points, and the first point is that nothing must be done between England and Germany which would in any way violate the prestige of Great Britain. Secondly, Great Britain must give us back one or two of our old colonies. That is the only thing we want." My next conversation—"And thirdly, we must come to a stable and everlasting line with Great Britain." That is all the Fuehrer asked for. He told me that on the eve of Dunkirk, three or four days later. It also shows you that during the whole war or—later, you know, the Fuehrer made this peace offer then in the Reichstag. It was perhaps not happily formed, I dare say. I don't think he believed very much that Great Britain would take it up, but I don't know. I don't know, really; but he never, even later during the war, never lost the idea that one day one might still come to an arrangement with Great Britain. And I remember personally what the memorandum was which I proposed to the Fuehrer during the war, which always had stated at the time, "Well, then, we must come to an arrangement with Great Britain."

Now, the question is: Why have all these trials of Germany been in vain? Well, here I must say this: I am convinced that apart from the question of world perception, which of course also molested or hindered a great deal this policy with Great Britain, it is to my mind no doubt that the idea of the balance of power which was upheld by Great Britain was the main reason why this friendship did not come about. I may perhaps point out that the point of view of the Fuehrer was this: He thought that the old English theory of the balance of power was old-fashioned, and he thought, with reference to the East, and to the possibilities of power displayed in the East, England should for her own protection, be glad to have a solid Germany; that is to say, a very much stronger Germany as a new balance of power in Europe. He quite often expressed that. That was the Fuehrer's notion. And especially a Germany, whose vital problems were solved, and which was prepared to give England all security guarantees, territorial and also as far as armaments were concerned. That is to say, first British supremacy at sea, the 100 to 35, which had been done—I am explaining to you the way the Fuehrer thought at that time, you see.

Q. Yes.

A. And secondly—and these were things which were offered to Great Britain all along by myself, officially, to British statesmen—secondly, the integrity of Holland, Belgium, and France, with the renunciation of Alsace Lorraine. Thirdly, a close alliance with Great Britain, through which, and as a condition of this alliance, the Fuehrer offered to Great Britain, to put at the disposal of Great Britain this 35 percent of the German fleet, plus 12 divisions, if ever England would have the necessity in her empire to defend herself. This was an idea of the Fuehrer then. Then also on the colonial field, the Fuehrer was absolutely willing to renounce colonial policy, but only he wanted for raw material purposes to have back one or two of the old German colonies. That was his view. And after the closing of the Anglo-Germany treaty, the Fuehrer was prepared, besides the fleet arrangement which had already been closed as 100 to 35, to come to an arrangement with Great Britain in the question of land and air armaments. That was also the part of the proposal.

Now, against this, the British point of view was—I wouldn't say of all people, but of quite a number of people—was that the National Socialistic Germany with Austria and Sudetenland, and so on, was getting too strong, and was endangering the old English theory of the balance of power, and that England would have to oppose this.

Q. Do you think there was any element of distrust of Hitler?

A. I don't know. At that time, I don't know. I think—you see, if Hitler was willing to come to such terms, as I have sketched them out now, this would have been the real proof of trust, really; so I don't think this question came in at that moment. Perhaps later on, but perhaps not at this moment.

The Fuehrer thought that England must understand his point of view, and should act accordingly. I have, on the other hand, always pointed out to the Fuehrer that England would not tolerate such a stronger Germany as the Fuehrer imagined, but that it would, that the very important circles in Great Britain would, at the moment when they thought this thesis of balance of power in danger, go against Germany, and at the opportune moment even go as far as war. That was my absolute conviction. I heard about this, and had repeated, even sometimes violent, debates with the Fuehrer. I am pointing out this, especially because it has been often said in propaganda, very clever British propaganda, that I had been advising the Fuehrer that England would not fight. You probably have heard this also. This is absolute nonsense. I must say that quite openly and frankly here, because it is known to everybody who knows anything around the Fuehrer that this has been one of the most striking differences of opinion which I have had with the Fuehrer. Quite fundamental. As Ambassador from London, I reported to the Fuehrer always in this direction. And I have, furthermore, I remember that during the war—this was said, always repeated again and again on the radio by British propaganda, that I had advised the Fuehrer wrongly. It said that the British people were degenerate and wouldn't march, and so on; so that I went to the Fuehrer, I think it was in 1942 or '43—I think it was in '43—and I told him that I thought this propaganda was harmful, and I asked him particularly whether he would allow that in an open speech I would say exactly how I told him. He agreed. I made an open speech sometime in 1943, where I made it quite clear what my position was. That is always what I told the Fuehrer. He never accepted my view, and I never came to a real harmony with him on this point.

Therefore, I merely want to point out that even already in 1936, to my mind, there were these very strong forces in Great Britain, who were absolutely of the feeling that this National Socialistic Germany with its program was getting too strong, and that one must oppose it and not make a pact with it.

Now, after the solution of the Austrian question and the Sudeten question, this tendency was getting very much stronger, and there were rather aggressive speeches made by British politicians against Germany, so that the Fuehrer got the impression that England did not want to come to arrangements with Germany, and that the anti-German circles were getting the upper hand. The Fuehrer then, to my surprise, made a speech at Saarbrucken, in answer to these aggressive British speeches. I may perhaps point out this—I don't know whether you know that. I thought it was unfortunate, but that since I have been Foreign Minister, I don't think—maybe once, but I don't remember it exactly—the Fuehrer has never shown me his speeches or discussed them with me. All his Reichstag appeals, all his foreign policy speeches, were always made without me. I complained about it once, but the Fuehrer didn't like it very much, and had the habit of deciding these matters, speeches and all decisions, deciding them very much out of himself, without consulting me.

[Another excerpt from this interrogation has been published as document TC-91 (Vol. VIII, p. 535).]

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 30 August 1945, 1430-1640, by Col. Howard A. Brundage, JADG. Also present: S/Sgt. Wm. A. Weigel, Court Reporter.

"My Foreign Office—The House of Difficulties"

A. [In English] I would just like you to understand. In the first place, you see, I have been a loyal supporter of the Fuehrer to the end. I did not agree with the policy in many respects. In 1941 I had a great difficulty and I gave a promise, a word of honor, that there would be no more difficulty with the Fuehrer. Since then I have followed up and stood behind the Fuehrer all these years of the war. You can imagine that already before the war and also after the war I have told you that I stood very often quite alone. This is true because as far as my own office is concerned, my Foreign Office was called the "House of Difficulties." The Fuehrer didn't like it, and he didn't like all the old men; the old routine men he didn't like very much—some exceptions, of course. I had to take very drastic measures, very often because this and that had been said by such and such a diplomat outside or inside the office and so on, and it was a continuous run, I should like to say, from many places against my office in Germany, that we weren't taking a firm enough position, that we were seeing matters only through the eyes of foreign countries and that sort of thing. So I had to see to it personally—the Fuehrer demanded from me always to take a very strict and very severe view toward all these difficulties whatever they might have been. This I did.

Therefore, of course, there are quite a number of these, my own people. I told you this morning I had to dismiss three Chiefs of Missions only a few months before the end. But this is not the only thing. I think I dismissed 150 higher officials at the order of the Fuehrer also in the winter of '44 and '45, you see, because he wanted the Foreign Office to become quite small. Many of these functions were taken by other places, for instance, the Propaganda Ministry and some other places, and he wanted the office to be quite small and me at the head of it only as a sort of a body which was there to advise him or to be ready for diplomatic missions. That was the whole conception of the Fuehrer of my Foreign Office.

"Military Necessity" for Invasion of Belgium and Holland

Q. Did you have anything to do with the Belgian situation?

A. Well, later on, yes. The Fuehrer told me one day that different preparations, I think, were being made for the Belgians—yes, that the French and English troops, I think it was, were being concentrated on the Belgian frontier, and a number of other military methods, which I don't quite remember now. I remember also that he was giving me a number of documents which were there which showed that there had been connections between the English General Staff, French General Staff, and the Belgian and the Dutch General Staffs. I remember that I got all the various documents and the Fuehrer told me to prepare a note to Holland and to Belgium that it was necessary to occupy their territory and make part of the advance toward France through these countries in order to—well, I will say in other words, that he thought that at the first opportune moment that the attack on the other side might go and that he was compelled to do it, and I was to prepare notes to the Belgian and Dutch governments that it was a military necessity to do so.

Q. Was there any attempt made to ascertain the validity of the documents that you had?

A. Well, there were various documents, especially on the military field, I think, and some were also on the political field from the central news service or what you call Intelligence, the Intelligence of the Fuehrer.

Q. But you had no diplomatic negotiations with either of those countries?

A. No. No diplomatic connections.

Norwegian, Balkan Invasions "Forced" Upon Hitler

Q. What about the decision to take part in the Balkans?

A. The decision came through the Simovic putsch in Belgrade.* You remember we had closed a treaty with the government. We had made a treaty and a week later out of the Simovic putsch, which meant hostilities, the Fuehrer decided to go against Serbia and at the same time, and very unwillingly, also to help the Italians in Greece. The Fuehrer was most unhappy that the Italians took up this Greek war. As I remember, we were in France, I think, meeting with Franco. I was with the Fuehrer and we were going to go back to Berlin or to Munich, and the Fuehrer heard something that the Italians were about to do something in Greece or in Albania or from Albania, and the Fuehrer wired to Mussolini and turned the train to Florence in order to try to end this war with Greece; but it was too late. When we arrived there, Mussolini said that they were marching. I remember that very well. We never had anything against the Greeks and we were rather sorry about the whole development.

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* Coup d'etat, led by General Simovic, March 26, 1941, overthrowing Yugoslavian Government which had joined the Three Power Pact on the 25th.

Q. Didn't Hitler have an idea that he wanted to occupy Crete?

A. Well, I know I can tell you this, that he absolutely had no intention to bring any war down to Greek territory. He didn't have any intention of that. I remember that he was saying after the Greek war occasionally that the Italians did this very foolishly, this whole war, that from a military point, they should have occupied Crete instead of invading Greece from the North. I remember the Fuehrer saying that.

Q. That was his idea?

A. So as to provide a springboard. I think so, yes.

Q. A bridgehead in North Africa?

A. I remember him saying that. I think he said it. I don't remember now to whom, but I remember it was his idea, that it was very badly done, this campaign of the Italians.

Q. On the other hand you had a long range plan whereby war could be fought outside of the borders of Germany.

A. But there was no long range plan.

Q. Certainly every development indicated that Germany was attacking other countries, not sitting back waiting for countries to attack her.

A. Yes, but there was no plan. The Fuehrer wanted to settle the Polish problem.

Q. But those successions of attacks against other countries, they must have—

A. I assure you, Colonel, it would be quite wrong to say it was planned. It never has been planned. The Fuehrer once, I remember told me that here he was in Europe being forced from one step to the other from the military necessities. The moment Poland started, the war with Poland started, and England and France had declared war on Germany because of the Polish question (the Polish war being settled), well, it was of course quite natural that the Fuehrer would try to keep war away from the German front as far as possible—which was quite natural already on account of the air and so on. I am convinced that the Fuehrer would never have consented, for instance, to go to Norway or to go to Greece and so on. But I am sure that the Fuehrer, and I remember that the note to Norway, and I remember that this was the essence of the note, that the English were going to occupy Norway. I don't know where he got the confirmation, but after the Norwegian occupation the Fuehrer had repeatedly said that he had just arrived within 34 or 48 hours before the English arrived there, and so when the English and French declaration of war had come, then to my mind this was the time that the whole matter was in the hands of the timetable of the General Staffs. The moment the English wanted to come, for instance, in Norway, the Fuehrer went there as quickly as possible as he could. Then the English landed in France and here the Fuehrer went and occupied Belgium, Holland, and France in order to keep the English and French as far back from the German frontier.

Then came the Balkans. We had made, you remember, we had no harm or difficulty with the Greek people. On the contrary, we had rather a friendship with them. We liked them. Already for the purpose of old culture, German culture is built up on Greek culture really. And I remember the Fuehrer saying repeatedly that it was one of the worst things that he had to go and fight against the Greek people who even fought very bravely. But we made a treaty, for instance, with the Serbs. I had made this treaty with Prince Paul at the close of Vienna and we hoped through this treaty that the whole Balkans would keep out of the war. We were trying to prevent the enlargement of the war which couldn't help us any. But of course, when Simovic came—the English people made this putsch themselves and even had already troops going to Belgrade to Serbia—so again the Fuehrer was forced down in order to not become a new Balkan front like the Silesia front in the World War. He didn't like to do it at all. This went on and on, the timetable, until the Russian war. There was a question of really—I would like to say once the war is started the political people, the diplomatists, kept matters out of their hands and the general staffs dictate really the necessities of war then.

I think one ought to see it that way. I mean, I can tell you that the Fuehrer repeatedly expressed the opinion that here he was being forced by military necessities to go and send German soldiers anywhere and to all sorts of parts of Europe, but I can assure you this was absolutely no plan, no laid down plan, or anything to dominate Europe. That is not true.

Q. What I am trying to find out—in your opinion in this succession of events that took place you must have started down the wrong road someplace. Where in your opinion was the first false step that was made?

A. Well, I don't know.

Q. Let me put it a different way. Some place along this succession of events there must have been a stopping point. Do you have an opinion where Germany could have stopped and avoided this disaster to her?

A. I don't really know. How should I answer you that? I think personally I am of the opinion that the outside world would never have tolerated a strong Germany, perhaps already as strong a Germany as the Fuehrer imagined himself which he wanted, which after all showed at the moment after Bohemia and Moravia and after the Polish question came up. But to tell you exactly where Germany might have stopped or what she should have done to prevent this disaster, well, the only thing I can imagine is that she should have renounced, for instance, should have renounced the solution, for instance of the Corridor or the Danzig problem, something like that. Then, perhaps, I don't know, it might have been possible that in such a case some arrangement with the outside world might have been possible. The Fuehrer, I believe, didn't think it so because otherwise he probably wouldn't have done it, because he probably thought at that moment that sooner or later some sort of combination which perhaps might not give Germany a chance at all would squash us. That was probably his view. I don't know if I make myself clear, but it is very difficult to answer the question.

Negotiations with Stalin and Molotov, and Invasion of U.S.S.R.

Q. What was your reaction to the decision of Hitler to attack Russia?

A. To understand the whole situation I think it is better to tell you the whole story. But it was in 1939 when I proposed to the Fuehrer to come to an arrangement with the Soviets. The Fuehrer first was not very pleased with this proposal on account of his fundamental views of Bolshevism, but after awhile he agreed that we should try. My view, in doing this was, firstly, I personally have always held the view that it should be possible also to find some sort of bridge between what our doctrine of National Socialism and Bolshevism is. Secondly, I held the view that on account of this difficulty with Poland—you know Poland was always lying between ourselves and Russia—I considered, and this was also the view of the Fuehrer, that an understanding with Russia might on the diplomatic field help to bring about an easier understanding between ourselves and Poland. And, furthermore, it was, of course, important also to know, in case of a hostile development between ourselves and Poland, to know where the Russians and where we stood towards each other. Those were more or less the reasons which made us do that.

The Fuehrer sent me to Russia. We negotiated with them through the diplomatic channels for a number of weeks, I think it was in August 1939. For us of course, this was also important because then already the attitude of the western world was rather unfriendly towards us. With France we made a treaty, a sort of treaty—I don't know whether you know that I had been in Paris in 1938 and we closed a sort of nonaggression treaty with them. This was all right, but all the same they were rather against —the feeling was rather against us—and the same thing was in America and in England. Then the Fuehrer allowed me to—he sent me to Moscow and I had a long discussion with Stalin and Molotov. During these discussions we talked about the various points of interest between our two nations, especially we also discussed the question that the idea of Bolshevism and National Socialism should not prevent the two countries to come to a good understanding. Furthermore, we discussed that we were in a tense position, of course, with Poland and that there might be difficulties, and at any rate it was the understanding between ourselves and the Russians that whatever would be the development we would keep a friendly attitude towards each other. There were a number of other points being discussed, of course, of a more detailed kind.

Then after the finish of the Polish campaign, I was sent again to Moscow and completed a pact of friendship with them and at the same time then the Russians occupied the eastern parts of Poland. This was agreed between the Russians and ourselves. Later on we also went into the Baltic and into Bessarabia and parts of Ruthenia later on. I tried in the meantime to enlarge this basis of understanding between the Russians and ourselves on the casual sector, and here I found great difficulties in Germany between the parties, or with the parties. I tried, for instance, to introduce a number of Russian films in Germany and this always met with great opposition of the Party. And, as I may say, that this pact, here I stood again comparatively alone. This pact was not considered with great favor between the people.

We tried to enlarge the economic situation with Russia. We closed a treaty for one billion marks which was a big treaty then, but we found the Russians rather hard in their demands. They were very hard bargainers.

Now, why came the breakdown of the German-Russian friendship? I must say this, that during the last part of the French campaign, I got a telegram one day from our Herr Schulenburg at Moscow announcing that, I think, within 24 hours, or it was the same evening or the next morning the Russians would occupy Bessarabia, so to speak, overnight. They didn't discuss it with us as the Fuehrer had expected them to, if they had any intention of that sort, but they simply did it.

Also the occupation of the Baltic and the way it was done was rather a surprise to the Fuehrer, and the Fuehrer at that date already spoke of signs of expansion measures of Russia towards the west.

Then after the war with France I had two discussions with the Fuehrer. In the first discussion the Fuehrer talked about the military deployment of Russian forces everywhere on our eastern front already during the Franco-German war, especially in Lithuania towards East Prussia. He talked again about the Bukovina tendency because Bukovina had been occupied. Certain parties passed there where Germans were living and it was quite unexpected by the Fuehrer that the Russians went in there. I asked the Fuehrer whether he had the intention of doing anything about it, but the Fuehrer, in the first conversation I remember, told me that he didn't want to do anything, that he told me to observe this policy with greatest concern, the future Russian policy.

In the second conversation which we had, the Fuehrer was very nervous and rather aroused or agitated because he had again heard reports of further concentration of Russian troops. I remember at that time there was the talk of 22 divisions in Eastern Lithuania towards the Russian front. And I remember he had reports of some of the German police stations that Communistic propaganda was being made in German factories again. I remember this was a point which agitated the Fuehrer perhaps even more so than the military side.

I think it was also the question—I don't remember that very well though that it was the Russian commercial delegation in Berlin. They had quite a few hundred people in this commercial delegation who were leading this propaganda.

The Fuehrer, as I said, was rather nervous. He told me this pact of '39 had been made by the Kremlin in case of a long war in the west to put the pressure on Germany economically and later to dictate political dispositions. He said he would not let himself be overrun by Russia and that he would take military measures against them.

I had at that time made a very earnest representation to the Fuehrer I pointed out to him the danger of any preventative action. I remember still I pointed out to him the word of Bismarck who said once that one couldn't look God into his path, and therefore one should never make a preventative war. I then pointed out the good relation that we had with Stalin and Molotov but the Fuehrer pointed out the great danger which these Russian preparrations might mean and that he would on no account let himself be overrun or surprised by Russia.

The Fuehrer then was in a rather difficult—he must have had—I don't know exactly—but he had certain difficulties about these Russian questions. Whether it was military or not I don't know. At any rate, he told me that he demanded of his collaborators and also of me a very clear line about this Russian policy, and I told him for myself that in case whatever policy he would decide towards Russia, of course, as a follower of his I would stand behind him. I told him that, but I have again urged very much then that all his news, for there was much news coming from Russia, should be looked into and confirmation of it should be found in every way and all information coming from there.

Then for a long time there was really no talk any more about the Russian attitude. I remember—I don't know exactly the date—but sometime during the latter part of the year I proposed to the Fuehrer whether we could not clarify this Russian position in trying to get a better understanding and to clear the situation, because I had heard no more then from any military preparations of the Russians at that time.

Q. When was that?

A. This must have been sometime during the autumn now when I proposed to the Fuehrer—I remember that I have written to Stalin at that moment—and I proposed to him—

Q. That was in 1940?

A. 1940. After the French war. I proposed to him to try and sort of clarify the situation on the diplomatic field with Russia to see whether anything aggressive was behind this tendency of Russia or these measures which had been reported to him or not. The Fuehrer agreed and by this way we—yes, tried first very hard to bring about a meeting of the Fuehrer and Stalin, but this didn't come off because the Fuehrer was of the opinion that Stalin would not leave his country, and, as the Fuehrer did not want to leave Germany, this meeting didn't come off.

Q. He wasn't invited?

A. He was not invited. But I wrote a letter to Stalin explaining the whole situation and I asked at the end of the letter whether

Molotov would—as I had been advised in Moscow—whether Molotov would not pay a visit to Berlin.

Q. Did you get a reply to that?

A. Yes. Stalin wrote to me that Molotov was quite willing to accept my invitation. I may perhaps point out at this moment—as a matter of fact this was the idea of the Fuehrer, but I quite consented to it and quite agreed to it. We had the idea of bringing Russia nearer to our Three Powers Pact in the hope that—you see, the Three Powers Pact was really closed, as I pointed out, just before by us with the clear intention not to come to war with the United States of America, but to keep the United States of America out of the war. That was the very clear object of this treaty.

Q. You mean by that that Japan would be a threat against the United States from the west?

A. I will point out to you exactly what I felt. You see, we felt the attitude of the United States was very unfriendly towards Germany. As we had good relations with Japan, we hoped that the fact of Germany, Italy and Japan coming to this treaty would strengthen those forces in the United States of America who were for isolation and who would then do nothing because the Fuehrer was always afraid on account already of the Jewish question of world perception and so on that the United States would one day declare war on Germany. He was always afraid this would come at any rate.

You see, we had the idea that a combination like that would help to bring what we called the reasonable forces in the U. S. more into power, who would know, if they went to war with Germany—for which we thought in Germany there was no reason whatsoever because we certainly didn't want this war—that they would still hesitate if they knew in case of an attack from Germany on the United States they would have to fight in Europe and in Asia. That was more or less the reason for the Three Powers Pact.

Q. Did you ever hear it discussed among any of the leaders of Germany that the real purpose of that was to permit Germany to continue with its world expansion program?

A. Never, no, never. Never has been discussed with me. It never has been discussed and I do not think if it had been, if anybody said something like that, they must have been what you would call loose-talking people, or something.

Q. You had a very rigid internal control?

A. I am of the opinion, I think the way the internal control was exercised was wrong. I don't think it was right and I think it was wrong. As a matter of fact, I considered the whole development of the police system and so on, I did not consider that in the interest of German unity. As a matter of fact, it may seem queer to you, that with these internal questions I worked 14, 16, and 18 hours a day with my foreign political questions, so I had nothing to do with the internal questions. I knew perhaps less about the internal questions than the boy on the street or the porter in the hotel. But I was amazed during the later months of the war when I suddenly got a glimpse of these police methods and things that were going on. I don't think it was right, the way it was done, but this, of course, was due to people who handled it badly. It was not formed well to my mind. It was not formed well.

Q. That shocked the conscience of the world.

A. Well, I can tell you this, Colonel. I know it is very difficult for you to understand and you have heard it perhaps from many people but it is the absolute truth that I tell you that I myself, and many others I am sure, had not the slightest idea of what was going on in the concentration camps, not the slightest idea. It was absolutely controlled and closed up, I mean to an extent that was hardly believable to you.

Q. Well, frankly, that isn't believable to me.

A. It is extraordinary, but it is the absolute truth.

Shall I go on with this Russian history and finish that? Molotov came to Berlin. In a talk Molotov had with the Fuehrer, this talk did not go very well because Molotov insisted very much on a number of matters, also of the territorial kind, that the Fuehrer —really, this conversation with the Fuehrer did not end in a harmonious atmosphere. There was no specific program for this visit, you see. We had thought it was only a visit of good will, among ourselves, and that I would try perhaps to clarify with this visit whether these Russian expansive tendencies, especially of a military kind, was something earnest and so on. Molotov raised certain specific points which gave to the Fuehrer, again I should like to say, the impression that we had more at stake with the Russian problem than the opposite. The Fuehrer then said that he could not, without talking with Mussolini, go further into these matters. But I asked the Fuehrer specifically whether he was not willing that I should try and clarify the situation further with the Russians and I tried to see if I could not bring, after all, about a friendly atmosphere. The atmosphere was friendly, but a closer atmosphere—I could see on what conditions Russia would, if possible, come nearer to our Three Powers Pact. The Fuehrer consented and I negotiated with the Russians. I talked with Molotov in the evening at my house. Molotov said he would talk with Stalin about it. You see, the Russians—well, you know that probably Stalin decided everything there, and Molotov didn't commit himself very much and he said he would present it to Stalin and he could give no answer, but he would promote it and help if he could. Then he worked through the Ambassador in Moscow, I think. For two or three months the negotiations went on but they did not really come very far because there were certain claims and certain desires of the Russians which it was impossible for us, for the Fuehrer, to accept. The question of the Balkans came up then and there were other points, and, of course, the Russians are very hard bargainers if they want something. You probably know that yourself. So these negotiations did not really get very much further.

Also, it was a question, the Mediterranean question played a certain role then and the Fuehrer thought that the Duce—that it would be difficult for the Duce, on these questions, so these questions, so these negotiations didn't get very much further.

And then came in the spring the putsch of Simovic in Belgrade and I don't know whether you remember that, shortly after the putsch a few days later, well, the revolution, Stalin closed the treaty of friendship with Simovic. This, of course, struck the Fuehrer very much as a sign of these fears which he had with Russia were really confirmed. I then proposed to the Fuehrer again to try to come to a diplomatic clearing up of the situation, but the Fuehrer said that he had such complete views or reports and information about complete preparations of the Russian advance and of the attack on Germany, so that the Fuehrer refused that and said he would not change anything more in the whole situation.

Now, about this military question, I can't tell you very much, but I remember the Fuehrer then one day decided, it was in June, that he would not wait until the Russians had finished their preparations of attack.

I know that the military people probably can tell you more about what these preparations are and were. I don't know very much about it, but I know that it was especially the military preparations, also the political tendencies of the Russians which they had shown in those months, and also the propaganda which was being made in Germany. And, as another point, I may say these reports which the Fuehrer got about the tremendous and huge Russian war potentialities of industry and so on which they already had, but were still building—we had trading negotiations with them at that time, and our engineers and so forth were there, and there were reports coming back. I have never seen them myself, these reports, but they made a tremendous impression on the Fuehrer; I remember that. That is the way the war broke out. So the Fuehrer went into Russia, I think it was on the 21st of June 1941. Well, I may say from the foreign political point, it was a very harsh blow because my political concept was really, well, I may say, ruined on that, because unless this war went well we were to come into a very difficult situation and I could tell you mainly that I have been anxious about the outcome of this war since the beginning of the Russian war. Of course, then came these tremendous victories and so on which carried one along. It caused us to have an optimistic view, but since the winter of '41-'42, since the German army got stuck before Moscow, I really must say that I have all along been anxious about the whole situation, very anxious. During the war I have, well, perhaps I proposed to the Fuehrer not once, but quite a number of times, to come to an agreement with Russia as quickly as possible, but the Fuehrer didn't want it. He only wanted to do it after victory which didn't come off, but I was very anxious.

The military people say that if the Fuehrer hadn't done it, that Russia would have struck and I believe they have proof, and also during the war there have been proofs found to that extent, that the Russians would have struck at us. And there again comes the time-table. As for me, as a political man, I would not dare to give an opinion on the matter of how these things would have developed or would not have developed. It is very difficult to say. I don't really know. I don't know, but that is more or less the history of this very sad end of our German-Russian friendship which I regret very much. But the military people still told me when I saw them in Mondorf * here that in case the Russians would have struck in a moment of a severe invasion, being absolutely near the German front, the situation with Germany would have been disastrous. The power which the Russians really have displayed now, of course, I think nobody had any notion, perhaps the Fuehrer a little bit. Several times he said he never knew what powers lay behind the Russians. I remember him telling me that.

I may perhaps add I don't know what really made the Fuehrer turn in his Russian policy or what influence there was, who discussed it with him, and so on I don't know. The Fuehrer had discussed this question with me only very seldom. I remember these two conversations, perhaps one or two others, very few, about this question of world perception having had anything to do with

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* Shortly after their capture, before transfer to the Nurnberg Prison, the principal Nazi officials were interned at Mondorf-les-Bains in Luxenbourg.

it. I couldn't really tell you, but at any rate I have the absolute conviction, and I had for myself when I went to Russia in 1939 and also when I wrote to Stalin in 1940, I had the absolute intention that I would like to see a long established friendship, for, let's say, at least an adjustment between these two countries. An adjustment of interest should be found.

And I was also of the opinion that the Fuehrer was of the sincere belief then that it could be done. That I can say. But I did know that—I don't remember who told me—that the Fuehrer had already given orders early in 1940 to make preparations for a Russian war, and so on. That is possible. If it has been done, I don't know. He never talked with me about that. He only said, that is right. He did say that he would take military precautionary measures. He said that, but I never knew that he had given orders to any—any definite military orders. That is all. I never knew, and if he had done so, Colonel, I don't think this was meant as a definite order of the Fuehrer. It was probably a precautionary measure, because before Molotov came, I think the Fuehrer still hoped very much that some solution could be found. I think so.

Excerpts from testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 31 August 1945, 1150-1200, by Col. Howard A. Brundage, JAGD. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; S/Sgt. Horace M. Levy, Reporter.

The Nazi View of German-American Relations

A. [In English] The attitude of the USA had really, since quite a number of years already, been rather hostile towards Germany; and especially, the Fuehrer felt that this was on account of the question of her handling—the way the Jewish and the Church question was treated by Germany. That was the conviction of the Fuehrer, and he had very much in his mind. I may add to that that President Roosevelt and also circles very much around him were also very hostile to my country. As I said, especially since the radical parts of the Weltanschauung Program was more and more coming into the foreground in Germany. There was the policy, for instance of the American representatives in Europe, which showed—and I don't know whether you remember that during the Polish war, there were documents which were found in Warsaw which came from Count Potocki, who was the Polish representative in Washington, and they had been published in the White Paper by the German Foreign

Office. They were really extraordinary documents and showed the activities of some of the diplomatic representatives of the United States in Europe, for instance, of Mr. Bullitt, I think it was in France. I remember that. I remember just a few names. Then I think also from Mr. Drexel Biddle in Warsaw, and also especially the Poles of the United States and Great Britain. Now I haven't these documents at hand, but you will be able to get them very easily. I am sure you have them, and you will be able to weed out what this Polish representative, who after all was a representative of a friendly nation to the United States, what views he gave on the attitude of important circles in America, in the United States of America, towards Germany. It gave us, to a certain extent the impression that very important circles, such as—and I think he said that, I don't remember it exactly now—in some of these reports, they were driving directly towards war with my country. And I think he even said once in these reports that very important circles in Washington considered a coming war with Germany utterly inevitable. Now, this is only, so to speak, the political background. Furthermore, he said, in one of those reports, that very strong influence was used in the United States, as it was called, "to stop Hitler," and to influence Great Britain, not to lend her hand any more—or a helping hand to any future further settlement with Hitler or which Hitler might try, something like that. This was about the contents. I have this just roughly in my mind, about these documents, and of course, the Fuehrer may perhaps have—I may perhaps say this: He was a man who never gave much value to diplomatic reports, which was unfortunate really to a certain extent, because he had not very much confidence in his diplomatists. He paid not a lot of attention, sometimes even too little attention to the press, and some sort of reports. And I may perhaps say this, that on that occasion, the intelligence, as far as foreign countries are concerned, was directed in a rather unhappy way, to my mind. I personally had really nothing much at my disposal except diplomatic channels, and among these channels we had perhaps an embassy there and a man of confidence in the embassy there, one or some. So we had perhaps a very small and limited—I can't even call it a net of agents—a very limited intelligence of our own in the Foreign Office. It was very small, really. The real intelligence, the way it was worked, was concentrated by the military Wehrmacht. That was the Abwehr (counter intelligence). The whole name of the military intelligence was Abwehr, so they got all the military news and also the political news that came from the Army. Then there was the other intelligence which came from the SD. They had their agents all over and they also had—this was reported directly to SD and from SD to the Fuehrer. I was supposed to get it, but that was always perhaps one of the worst, one of the most unpleasant aspects that I as Foreign Minister, and my men in the Foreign Office, really never had at their disposal all the extensive news which was coming from abroad. We should have had diplomatic reports, and the intelligence to compare and see what was really going on, but unfortunately we didn't have that, and I had to continue this fight for many years to get these reports from military and from the SD side, but unfortunately I didn't succeed very much in that. So that very often, decisions of the Fuehrer were taken on every account by reports which I hadn't even seen. This very often happened.

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 31 August 1945, 1420-1535, by Col. Howard A. Brundage, JAGD. Also present: Rudolf Pressburger, Interpreter; S/Sgt. Horace M. Levy, Reporter.

The Nazi View of German-American Relations

[Continued from morning session.]

A. [In English] Of course, there were these deliverances of war material on a large scale to Great Britain. Then was the—I remember there was great talk in Germany about the news that volunteers, American volunteers, were serving in the British Army and especially in the British Air Force early in the war. Then, I think, that American pilots were being trained in Canada. Then came the question of these deliverances of the destroyers, 50 destroyers to Great Britain. I remember that struck the Fuehrer very much. Then came the question of the active assistance of the United States in Northern Africa, the building of a road to Alexandria. I just have a vague remembrance of that, and the occupation of the—replacement of the British occupation of Iceland. Then came the—I don't remember whether you remember that—something that you recalled your Ambassador from Berlin. I think it was after the Jewish questions broke out, and later all the German consuls except the personnel of the Embassy in Washington, all the capitals, in San Francisco and other places were sent out from the United States on the ground given that they had made, I think it was, propaganda and intelligence. Then, of course, if you remember, the declaration—when our submarine warfare came on—the declaration of zones, which I think was a formal declaration of the United States, though I don't remember it exactly, in which American ships would shoot at German ships without warning, if they were shown in the neighborhood of convoys. It was a formal declaration of a special zone to the chief of, I think it was, to the Chief of the British Harbors, where this war material was going on the "cash and carry" clause, where it was sent to England. And then, afterwards, of course, came the actions, and I can't give any details today about it, but I know that there have been encounters, meetings between German ships, whether they were submarines, I don't remember, really, but I know that German ships, after that declaration of operation zones, have, how often I don't know, but have been sunk actually by ships of the United States Navy. Now I may perhaps point out to you the feeling of the Fuehrer. I have always particularly asked the Fuehrer to do everything which we possibly could to avoid war with the United States of America, and I may say that the Fuehrer always was absolutely agreed with that, in order to avoid any conflict possibilities. If you look up the German attitude since 1938, '39, '40, '41, to the outbreak of war, till Pearl Harbor I think you will find that, for instance, as far as speeches, press and also military measures are concerned, that the German attitude has been absolutely restrained. I remember the Fuehrer giving a particular order himself that no matter what the United States newspapers wrote on Germany, not to answer and not do anything that would make the situation worse, because I was afraid that if we would answer, you see, these things would go to and from and lead to a situation which might be disastrous.

Q. Before we go on, what in your opinion, what was the underlying cause of that attitude of the Fuehrer?

A. The Fuehrer, I can assure you that the Fuehrer personally was of the opinion that there was absolutely no necessity of war between Germany and the United States of America. That was his view. But he was of the opinion that there was especially, I think, on the ground of the Jewish question, very strong forces in the United States who worked against Germany. He was absolutely convinced of it and also very important circles of the Government, he thought; but he personally also would have liked before everything to avoid this war with the United States. There can be no doubt about that.

The idea—I mean, I may perhaps ask this question: the propaganda which had been made that Germany had any intention of doing anything whatever on American soil, the United States of America, Central America, or South America, that was only American propaganda, wasn't it? Or was it really believed that we had any intention of ever doing anything like that?

Q. I really don't know.

A. I can assure you that it always struck us as so ridiculous that we never even thought of it.

Q. What do you think was the ultimate purpose of the agitation in South America?

A. Well, I tell you, that was absolutely—the whole business was absolutely tommyrot, nonsense, complete nonsense. I can assure you most definitely that never anybody in Germany, not one soul I think, ever had the slightest thought of really making any sort of a policy anywhere in America, either South or Central America or anywhere, ever. What brought this thing about, and I was very sorry about it, we had this Ausland Organization, which was an organization which was really the child of Hess. You know Hess who went to London. But the real idea of what they should do was a good one really. They should keep the German citizens in foreign countries, sort of make them social, get the rich people to look after the poor, you know, that sort of thing, and help each other and so on, and make a good collaboration of the German colonies abroad. That was quite a good idea I think as far as that is concerned, but now what happened is this: Of course, as you always know, there are people getting ambitious out there and therefore a certain number of people, like in South America for instance, the Argentines, where there are many people of German origin. They had relations here and there and so on, and they wanted to show themselves, to show they could do something and give themselves a good position and so on; and so they did in those countries, a certain number of things which were to my mind rather ridiculous, you know, but which showed up as if there was here tremendous German propaganda going on and which created certain diplomatic difficulties sometimes between ourselves, the Argentines, Chile, Brazil, and so on, in which we had now and then to calm down by diplomatic channels. But "au fond" there was nothing to it. It was simply very cleverly taken up by American propaganda and brought up to some huge affair. But if you could look into the space of what really did happen in those years in those countries, you can see for yourself now, it is absolutely—it was almost nothing. You see, perhaps you would have a party meeting somewhere and they would do the silly thing and invite quite a number of Argentine citizens, and they would make "Heil Hitler" and something like that. The real significance of the whole business shows you—when I was in London as Ambassador, I looked into one of these organizations, of the Ausland Organizations, and do you know how many members this whole organization had, in the whole of Great Britain—no, it was in the English Isles, not in Great Britain—500. That is all. I mean, 500 members of the National Socialist Party were in the whole British Isles.

Q. But you are sure that there were no discussions or any decision reached, either one way or the other, with respect to even the possibility of war between Japan and the United States?

A. No, this was never, to my mind, discussed at all. Of course, this tense feeling was there, which might possibly be said that once it might have been discussed or said, "What will this lead to?" or something. I don't know. I don't remember that very well, but surely the possibility of the war of Pearl Harbor was never discussed in a way as if it was going to happen. On the contrary, if I remember well, we had rather the opposite feeling that things were coming to adjustment.

Q. And you were also sure that there was no encouragement of Japan, looking towards the creation of an incident that might bring about such a war?

A. No, absolutely not. I can say most definitely, no. You know, I tell you, even if something had been—which definitely had been in the Japanese mind—the Japanese are very close-mouthed. They don't say what they think. My experience with the Japanese taught me that they are very close-mouthed. We never knew exactly where we stood, never. They never said really what was going on.

I remember I told the Fuehrer, that according to the stipulation of the Three Powers Pact since Japan had attacked, we would not have to declare war on the United States of America, formally. So then the Fuehrer decided—he thought this matter over quite awhile, and then he gave me a very clear decision in that respect. This is more or less what he said: "If we don't stand on the side of Japan, the Pact is politically dead. But that is not the main reason. The chief reason is the United States is already shooting against our ships. They have been a forceful factor in this war, and they have, through their actions, already created a situation, which is practically, let's say, a situation of war." I may perhaps point out—I don't remember now exactly how it was, but I think it was Washington who, a month before created this expression: "All measures short of war." Do you remember that?

Q. Yes.

A. I think it was created in a speech by Mr. Roosevelt, or somebody, "All measures short of war," which, of course, meant "so near war" that the Fuehrer was of the opinion at that moment that it was quite evident that the United States would now make war against Germany. Therefore, he ordered me—he gave me the precise order to hand over the passports to the American representatives.

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 10 September 1945, 1130-1215, by Col. Howard A. Brundage, JAGD. Also present: Clair Van Vleck, Court Reporter.

Effect of U. S.-Japanese Relations on Germany

A. [In English] You see, the Fuehrer at that time had worries. He saw the attitude of the United States "short of war" and he was worried about an agreement, because there were certain groups in Japan who wanted to come to an arrangement with America. He was afraid that if an arrangement would be made between the United States and Japan, that this would mean, so to speak, the back free for America and the expected attack or entry into the war by the United States would come quicker. I remember there were preparations of that kind.

Q. You mean by that, that he was afraid that if arrangements were made with Japan, that then the Pacific coast would be clear of trouble, and then all the attention of the United States could be directed toward the Atlantic?

A. Yes. You see the situation—we had the situation short of war against us. We had this pact with Japan, but there were certain difficulties. For instance, in the press it said, that if the United States and Japan would come to certain arrangements, that would mean that they would not have to work automatically if the United States went into war against Germany. Do I make myself clear?

Q. Yes. Was that the press comment or was that Hitler's reasoning?

A. I think there were comments like that in the press going on, which went in that direction. I remember the Fuehrer talking of the thing out of the Three Power Pact.

Q. Was that also Hitler's reasoning at the time?

A. Yes. And I remember that we discussed it once and that is quite possible. I don't remember the details any more, but at that time there were discussions to keep them in line.

Q. Then, summarizing, Hitler was opposed to Japan making any arrangements with the United States?

A. Yes. One can say that.

Q. That was before Pearl Harbor?

A. To my mind, I think a long time before Pearl Harbor. I don't recall it exactly, but one can see that in the press.

Q. Would you say that it was in the Spring of '41?

A. I don't really know about dates. It is very difficult for me. I only know my recollection by this: that Pearl Harbor was a complete surprise to us all. We didn't expect anything like that and so these negotiations, of that kind, to my mind, must have been very much earlier. That is the way I recollect it, but I couldn't really tell you exactly when, but I do remember that we had not given to Japan the counsel ever to attack the United States. I don't remember that at all. With the position of the United States short of war, and the shaky attitude of certain Japanese circles, it might perhaps have been understandable, but I don't remember that we ever gave a counsel like that; but perhaps I may explain, chronologically, the way it went. First, our first dealings with Japan were against Russia. It was anti-Comintern. It was more on the line of world perception. Then came the Three Power Pact which was closed, as I think I said before here, in order to keep the United States neutral. Then during the war, since the declaration of Great Britain with war on Germany, the Japanese had discussed at various occasions the idea of attacking England through the south on Singapore. I remember myself discussing with the Japanese in Berlin, I think also in Tokyo, the interest we took in such an attack, on the neutrality of the United States. I remember pointing that out at various occasions.

Q. Well, logically, it was much to your advantage that the United States did not enter the war against Germany.

A. It has always been in my mind, and I remember quite well that I have talked with the Japanese in Berlin, in the sense that it would be in the interests of us all, to keep the United States neutral, which was the main object of the Pact when closed. I don't know whether on the military sector there had been anything. I don't know; I was not informed, but I don't suppose so.

The Enemy "Forced" Hitler to Go Everywhere in Europe

A. So far as aggression is concerned, I can tell you about something, which the Fuehrer once told me quite frankly, that he was quite worried. I think it was during the time of the Serbian-Greek business, he said, "Here I am. I wanted to settle my new Germany, with the minorities and so on. Here the enemy forces me to go everywhere in Europe, there and there, where I don't want to go at all."

Q. But, in retrospect, don't you agree now, of course, he was disturbed by the fact that he started out to do something and he found out that he was getting in deeper every time he wanted to gain more territory for himself because somebody objected; when he went to get territory, he found a proprietor there who resisted?

A. I am sure, Colonel, that is not right. The Fuehrer, the way I see it now, wanted to settle the Polish program, and through England then taking the point of view, being behind Poland and declaring war on Germany and France also; of course, this meant a big war, at least a European war, if not a World war. The Fuehrer, to my mind, had absolutely no sketched out definite program of any sort of forming what later on was called the Gross Germanic Reich or the Gross Germanic State. I want to say a word to you about that. He never had that idea. It all came during the war. He never had that before.

Q. You admit he knew when he attacked Poland, that that meant war, a big war? I mean there was no doubt in anybody's mind about that?

A. I can't answer you that question, what the Fuehrer really thought then.

Q. Didn't you discuss that with him?

A. Oh yes, the Polish question, I can tell you exactly. I can tell you most definitely that the English guarantee, which the English had given to Poland, would mean war with Great Britain, and that is because the Fuehrer—

Q. That is what I say, there was no doubt that that meant war when he decided to attack Poland.

A. I was of that opinion, and the Fuehrer was also, from the first, and, you know, on my proposal he stopped the advance. You know, the military operation had already started in August. He stopped that, which showed me that he was absolutely of the same opinion. He did not want war with Great Britain.

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 10 September 1945, 1415-1705, by Col. Howard A. Brundage, JAGD. Also present: Siegfried Ramler, Interpreter; Nancy M. Shields, BCV, Reporter.

Hitler's Refusal to Initiate Peace Discussions

A. [In English] The Fuehrer, of course, I must say, held everything very firmly in his hands. Perhaps in the last year or half year, things ran more out of his hands and into others. That is possible, but there were a number of people who had great ambitions to become the successors of the Fuehrer and most of them had their Foreign Minister ready all the time. Himmler had his own, Goering had his own, and Bormann had his own.

As it was brought about, we lost the war, and there is no doubt if the Fuehrer was alive today and sitting here, he would say "I have the entire responsibility."

Q. He would pretty near have to say that!

A. He would say that. There is no doubt about it. You see, I never quite understood one thing, that during the last four years, since 1941, as I told you this morning, personally I have tried to come to a quiet foreign political talk with the Fuehrer. It was never possible. I have tried to come down to a quiet talk of two or three hours to discuss the whole situation because I felt the two ends would meet somehow. I have felt that since Stalingrad three or four years ago, but it was not possible to get the Fuehrer to a quiet discussion. I have tried it 20 or 30 times. He always said at once, "We must have a military success." I would say, "What are you going to do? The world opinion is there for the people and not the people for the world opinion. How are these ends going to meet?" and so on, but he evaded the definite talk about the whole real world situation. I was sometimes rather desperate about that. I came home very often telling my people this. I remember, for instance, once that it was after your landing in Africa. You see, the Fuehrer had a firm conviction that we would have a big victory and after that he would go in for negotiations and it was his fixed idea not to go into negotiations except after a big victory; but that didn't come any more after the last 3 and a half years. I remember after your landing in Africa in 1941 [sic], I met the Fuehrer in his train when he came from the Eastern Front to meet the Italians. I went in to his train at Bamburg, and I was very anxious about the situation for I saw the whole calculation of the submarine warfare had been wrong because it was calculated that such a landing was impossible but I saw that you had been landing with four or five million tons or something like that—a huge landing. I went into the railroad train and to the Fuehrer and I told him, "I think this situation is very serious—very serious." I told him I had a proposition to make and said, "Allow me today, give me full power, to treat with Stalin to make peace with Russia at any sacrifice; then afterwards, if we manage to do that, then we will come and get the Americans and the English out of Africa again because we knew it would be disastrous for the Mediterranean and if we succeed with that, I will propose a new peace offer to England and America." The Fuehrer turned me down very flat and in such a way that I was not even able to mention the problem. I tried it after the Italian breakdown, when Mussolini was liberated. I went to the Fuehrer and he was quite willing, and sketched out a line with the Russians and next day he said "No." I wanted a definite authorization to discuss with Stalin, but next day he didn't want it any more. I made three or four memoirs at the time, saying he must have this lightening of the burden and so on, but he didn't want it. I don't want to criticize. I don't know whether it was possible. I want to explain the situation. The Fuehrer was convinced he must break the thing through militarily and only after victory to come to negotiations. Whether I am right or he was right, whether it would have been possible, I don't know. Perhaps he was right.

Hitler's Hope for Victory Till the End

Q. Is there any doubt in your mind as to whether Hitler is alive?

A. He is dead. Surely dead.

Q. You are sure of that?

A. Yes. He told me. He told me that he would die. He told me that on the 23d of April. That is absolutely certain. He said, "I am going to stay here, and either Berlin will be liberated" (which he hoped for still). But the amazing thing is this, which I never quite understood; that six weeks before the end I came to see him in the Reichschancellery and this must have had something to do with the 20th of July because I came to him in the Reichschancellery and he said, "Ribbentrop, we are going to win this war by the length of a nose." That was six weeks before. I said, "Good God, how?" and he was then convinced that the new types of airplanes would help to bring the turn of the war. I think he was counting on some new airplanes. I am not well up on technical matters. Wasn't it the ray planes? Airplanes sending out rays? He had a report of some kind but I am only saying this to show you how some fanatical belief was in the Fuehrer that for this whole life, the way he went, he could not lose this war. He was in earnest when he meant that. I saw it. I was amazed.

Excuse for Attacking Poland

Q. Do you remember any reason that was advanced by Germany about its excuse for attacking Poland?

A. The excuse was, of course, the Corridor and the Danzig problem not being settled. That was the reason as far as I personally remember. There must have been tremendous outrages somewhere. I don't remember exactly.

Q. Danzig and the Corridor would not have been the excuse because that was merely the case where you asked the Poles to do something and they said "No." That was not a legitimate excuse. There must have been others.

A. The Fuehrer wanted to settle the problem of Danzig and the Corridor, but how the situation was aggravated in the last few days, I can't tell. I know there have been continuous reports pouring in to the Fuehrer of outrages there and there and there, and what that was exactly I must say I don't remember well but that surely is all laid down in this White Book.

General Karl Wolff—Intercession with Himmler

Q. Do you know a General Karl Wolff?

A. Wolff, I knew quite well. I always personally considered Wolff, and I still have that opinion today, as I have never had any reason to call it otherwise, as rather a good genius on whom Himmler had a very bad influence. But I always considered Wolff a good influence because when we had certain matters to settle with Himmler and I don't know whether you know that during the last two or three years there were quite often rather severe grievances between myself and Himmler, Wolff always tried to be the intermediary and he did it rather well and smoothed things down. For instance, I remember in former times I had rather a relationship to Himmler because I saw in the original idea of the SS an idealistic note—that is to say, to create a new German leadership. My first great grievance with Himmler was about the Rumanian question. That was, I think, in 1941. It was something like that. When this question of the Rumanian region came up this was one of the first times when the SS started to mix very much in foreign policies, and I had to take a very stern view because the Fuehrer had decided on Antonescu and Himmler supported the other side in Rumania and we had a very severe divergence then which really broke our relationship more or less. Then from that time on, my relationship with Himmler was outwardly all right. Himmler was a very powerful man and our relations were outwardly fairly good. But internally, it became worse and worse from year to year and from month to month. I still occasionally saw Himmler because he was a very powerful man and we had to work together on certain instances, but the idea of the SS dominating everything became also more and more felt in the whole attitude of the world opinion foreign policy and so on. In later years, I think it was since 1942 and 1943, two years or something like that, Wolff was in Italy and, of course, in the mixing up of the SS and various forms of political sections and intelligence and in the embassies and so on, this got so severe that these divergences were bigger and bigger and my personal relationship with Himmler was very bad. Sometimes we saw each other and we had one or two very bad encounters, also before the Fuehrer, so that it was—Himmler was a very powerful man and I sometimes told one or two of my people that they would have to be careful.

Q. How about Wolff? Was he obedient to Himmler and everything Himmler wanted to do?

A. What I know of Wolff, he was, of course, Himmler's man and he was together with him for a number of years but I don't know much of their relationship but I personally would think, from what I know of Wolff, they must have had a lot of divergences and I considered his influence to the good side. Himmler had to my mind two souls. An extraordinary man—some of his ideas were on the idealistic side and some were terrible.

Why Hitler Occupied Hungary

A. Of course, he (Hitler) did this whole thing in Hungary —the whole occupation of Hungary was done because these reports came that Hungary was concluding a separate peace and the Fuehrer moved in because he thought that if the enemies came in, the enemies would break up the Balkan Front and the Fuehrer was always of the opinion that the Jewish element was one of the main elements to influence the Hungarian government.

The Responsibility for Concentration Camp Deaths

Q. Assuming that it is true that there were millions of Jews and other people killed in these concentration camps, don't you admit that such an order would come directly from Hitler, in view of your statements that Hitler was entirely responsible for everything that went on in Germany?

A. I was asked that question in Mondorf.* I don't know.

Q. You know you cannot be backing and filling on these things. Either Hitler was not responsible for everything that went on or he was.

A. Responsible, of course, but whether he knew that or not, I don't know.

Q. Not only that he knew it but ordered it?

A. I don't know. I can't imagine it.

Q. I am not talking about your imagination. I am saying, using that assumption, assuming that to be true, assuming there were two million Jews killed in concentration camps in Germany, whether sick or well, could that have been done without Hitler's orders?

A. It is very difficult to answer that. I really don't know.

Q. What is so difficult about it?

A. He must have known it but whether he ordered it—

Q. Could anybody else have ordered it without getting authority from Hitler for such a program?

A. It is hard to believe.

Q. Isn't it a fact that Hitler must have ordered it?

A. I don't know.

Q. If you don't know, it certainly destroys your theory that it was a one-man government.

A. It certainly was a one-man government. That is certainly true.

Q. If you stand by that, then there is no other answer you can give to that question except that he did order it?

A. It is very difficult for me to believe that. That he ordered that? Things were done in a queer way sometimes.

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* See footnote p. 1193 of this volume.

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 13 September 1945, 1537-1642, by Col. Howard A. Brundage, JAGD. Also present: 2d Lt. Edward H. Littman, Interpreter; S/Sgt. William A. Weigel, Court Reporter.

Events Leading Up to German Occupation of Hungary

A. [In English] In Hungary, the Fuehrer was always very suspicious with the Hungarian position, and I may say also—perhaps, unfortunately; I don't know—to the personality of Horthy; and especially, perhaps less to him personally, I would like to say, but to his entourage. And I personally think rightly so, from the German point of view, because a lot of the people who were around him were decidedly not friends of Germany. Now, we have, of course, to the outsider been friends, and to a number of friends, who were friendly with Germany and so on, but during the war the Fuehrer got—when things went well, everything was all right. As far as I remember they were the first to ask to join the Three Powers Pact. The Hungarians asked first to join it. They were enthusiastic about it, and they joined it first. Then I think also after the Russian war started they asked to participate in the Russian campaign, so they were quite willing to help and be on the German side and to go for quite a while, because we didn't even ask them to do that. It came from them. I remember that well. So everything went well for a time.

Then, of course, came the bad developments in the East after Stalingrad, and here the first great difficulty arose that the Hungarian troops didn't do very well, which led to a sort of certain emergency and so on. Then the further development was that news came from Intelligence to the Fuehrer over and over again that the Hungarians had sent emissaries, I think it was to Turkey and also to Sweden, that there were always rumors of the Hungarians trying to find feelers with the enemy and trying to make a separate peace. These rumors accumulated, and I think the Fuehrer—had he seen him two or three times, I don't remember now—at any rate he has seen him on various occasions, once I remember in East Prussia in his headquarters, and I think twice I remember in Salzburg, and I think generally these discussions and talks with Horthy and the Fuehrer were alone. I didn't much participate, but during one I did.

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* See also Statement XIV, "Hungarian Relations with Germany before and during the War" by Nicholas Horthy, Jr. (Vol. VIII, p. 756.)

During these discussions the Fuehrer, I think, talked quite openly with Horthy about the reports that he got about the inferences, which were about their going against Germany and so on. It was several times, well, I may perhaps say this: The Fuehrer didn't like the Hungarians from that moment. He never liked them very much, but he disliked them very much since then, of course. I think the Fuehrer justly thought so, that the Hungarians had a lot of advantages from Germany. They had had at that time three revisions of their Treaty of Trianon: the revision with Slovakia, where they got part of their territory back; the revision with Siebenbuergen, which he made with the Austrians in Vienna, where they got part of Siebenbuergen back; and then they got another part, which was the part that had been taken from them in the Treaty of Trianon and given to Czechoslovakia. So the Fuehrer thought they ought to be very thankful, but they were very ungrateful.

All of this sort of accumulated, and when the Fuehrer thought that things did not run very well, then they tried to make these rumors of separate peace and so on, that were not only rumors but were also reports which came to the Fuehrer from the military intelligence, from the SS intelligence, and we also got various reports—and when he furthermore heard that, I think it was that, important people had been sent by the Hungarian government out to have feelers with the enemy, then, of course, he was very upset about it. He told Horthy on these various occasions that if things didn't get any better and Horthy never did anything about it, and the Hungarian people didn't do anything about it, the same people remained, and so on—and then what brought about the crisis? I must think it over for a moment.

Yes, then I think there came very definite reports of Horthy trying to treat or treating with the Hungarian Government and that was the time when, let's see, now—I think that was the time when the military situation in the Balkans became very grave when there was the talk of parachute divisions, English parachute divisions, landing in Hungary. There was on the other side the Russian advance, of course, coming nearer and nearer to Hungarian territory. That was more or less the situation. And in this situation the Fuehrer was very much afraid that Hungary would now turn over and make a separate peace and that this would bring this whole realignment in disorder and bring the Southern Balkans and Eastern Balkans, that is, Rumania, and, of course, Croatia, Greece and so on, bring them in, an absolutely impossible position. That was more or less the background when he invited Horthy to come and see him, to have a last discussion to settle the matters and to see whether he could not keep him in line.

Now, the discussion which the Fuehrer had with Horthy, I was not present, but I believe it went very badly, because I think —I don't know—Horthy I think left the room. Something like that happened. It was a very tense and very awkward situation. The Fuehrer had decided that he would absolutely occupy the country in order to put it in order, and it was now a question of whether out of it would develop a German-Hungarian war or not. This was the question when Horthy was at Treson. That is in Salzburg, as a matter of fact. And in this situation I remember he was very glad then that a man was there who was really sort of an intermediary. It was Herr Sztojaj. I don't know if you remember the name. He was the intermediary. I asked him to come and see me. The Fuehrer was in a very angry mood, and he said, "I don't mind. I am not going to let myself be betrayed. I am going to take my own measures."

So I was scared or anxious about the situation, and I may perhaps say this: I have perhaps been contrary a little bit to the Fuehrer, but I have always held up the Hungarian flag. The Hungarians never thanked me for it. On the contrary, they did the very opposite. But all these revisions which they got in, they have after all been treated. Then the Fuehrer ordered it and I have treated them with Count Tranau and with the Rumanians, and Slovaks, and so on. They ought to have been very grateful about it, but they were not. I sometimes myself complained to the Hungarian Government about it, but I was always known at home in my country of having what one would call a Hungarian heart, because I rather liked the Hungarians.

In this situation I talked with Sztojaj and told him, "For heaven's sake, you talk again with Horthy"—I think Horthy had already asked for his train then—"If Horthy goes away now it will be a disaster, because in the first place the material which we have here in the hands of the Austrians is, of course, disastrous for you, for Horthy, and for everybody, and for the whole Hungarian Government. If Horthy goes away, what would happen? The Fuehrer will order me to publish it and the German troops will march in tomorrow morning in order to get their fighting troops in order. That will be the result. So for heaven's sake help me and save the situation."

So he went off to Horthy, and talked to them. He was a good man. He went off and talked with him and so Horthy went to see the Fuehrer again, and so they arranged the whole situation among themselves. And Horthy was then at the end, I think, quite satisfied, as a matter of fact, that things had run so. I think we find afterwards things went quite smoothly. But there was a moment of great tension then, you see.

Q. Do you know when publication of the consent of Horthy was made?

A. To go in?

Q. Yes.

A. That is right. It was agreed afterwards. There was a tense moment, you see, in the whole negotiations. I think Horthy disagreed absolutely with the Fuehrer.

Q. But it is a fact that the newspaper publicity was brought up prior to the time Horthy gave his consent?

A. No. No. Surely not. The German troops then went in with the consent of Horthy. It was agreed then. Most certainly not, because Horthy was there, you see, and the Fuehrer told him quite openly, "I am going to do that." You see? "No matter what, I can't leave the rear of my troops in a situation like that. It is quite impossible."

Q. But you are sure, are you, that the newspapers didn't come out before Horthy gave his consent?

A. No, most definitely not. I am quite certain of it. I can tell you that quite definitely. That I would remember.

Q. Was Horthy placed under arrest at that time?

A. No. In Germany?

Q. Yes.

A. No. Not at all. Nothing like that. No. I think it was only what you would call a hard conversation which the Fuehrer had with him which went—and they separated, the first conversation being in disaccord, in disagreement, you see?

Q. Was Horthy ever threatened with arrest at that time?

A. No. Never. Not once. Absolutely not. Most definitely not. Never. The Fuehrer would never have done that. Absolutely not. There was no threat.

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 20 September 1945, 1430–1618, by Mr. DeWitt C. Poole, Special Representative of the U.S. Secretary of State and Col. Howard A. Brundage, JAGD. Also present: Siegfried Ramler, Interpreter; Pvt. Clair Van Vleck, Court Reporter.

Hitler's Distrust of the Foreign Office

MR. POOLE TO THE WITNESS:

Q. We know, not from one person but from numerous persons of the Foreign Office, that this important step in foreign relations [the anti-Comintern Pact] was taken without their knowledge.

A. It is quite possible that only one or two knew, but I am sure Neurath must have known.

Q. You think Neurath knew?

A. I should imagine so because the Fuehrer discussed everything with him.

Q. Again, Herr von Ribbentrop, you imagine so. Is it possible, in a well-ordered state, that the Minister of Foreign Affairs should not know that negotiations of that kind were going on?

A. I am sure he knew. I am sure of it. I don't remember now exactly when, or how, or if he informed him. I don't really recollect at the moment, but it is quite possible that the Fuehrer then, I don't remember that exactly, did not want too many people to know about it. That is quite possible, because in such things he always liked to have not too many people to know about them. It was the same thing, you know, when I made the naval arrangement, I might perhaps tell you, with the English. That was something which I negotiated for the Fuehrer, so to speak, being in the Foreign office and being under von Neurath, but the Fuehrer also gave me instructions, I remember, so far as the naval arrangement is concerned. He gave me that all direct, and I remember that the Fuehrer himself informed von Neurath that he sent me and so on, and, of course, I also went to see Neurath about it. But the arrangement and everything was more or less in London, also directed by myself on particular order by the Fuehrer. This you can only understand because the Fuehrer had a tremendous antagonism or dislike, or he always stood under the impression, which I may perhaps say I never got over that myself until the end, even when I had the Foreign Ministry since 1938, I never could do away with the distrust of the Fuehrer with everything which had to do with the Foreign office. There were many, many things which the Fuehrer discussed with me, many, many things, which he, particularly, every time told me that I was not to tell a soul in the Foreign office. This was a particular dislike of the Fuehrer, the belief of the Fuehrer that the people in the Foreign office would not keep secrets and could not keep secrets, that these things would come to the ears of foreign diplomats and that sort of thing. It was almost a mania of the Fuehrer, which went through all along. With Neurath it was the same thing and with me it was the same thing.

So when I closed the naval arrangement, I got all the instructions, not from von Neurath, but I got them from the Fuehrer, and I got all the detailed instructions from the Admiralty, from Raeder, and so, direct. I remember that very well and the Fuehrer wanted me to treat it that way and not to discuss it with all the other officials of the Foreign office. Of course, Neurath was informed, but I don't think even the Under-Secretary knew. When the naval arrangement was closed, it was a great surprise to most people of the Foreign office. I remember that.

Q. I am sure that what you say is correct. It, of course, is other information, but I come back to my point. I assure you, with the utmost kindness, that I do not think that you discussed with me frankly the question of the Japanese pact in its bearing on relations with Russia and China.

A. Yes, but may I ask in what sense do you mean? Do you mean that this pact means a change of policy?

Q. Yes; I have already said that.

A. There is no doubt that that is what it means. It meant, to a certain extent, a change in policy; there is no doubt.

Q. To a certain extent? It was practically a right-angle change of policy with regard to two countries, was it not, with regard to Russia and with regard to China?

A. With no doubt in regard to Russia. With regard to China, that was something that came up very much later, wasn't it? I mean because the Chinese war had in no way broken out and I think our relations with China, so far as I do remember it, were kept on a good basis.

Q. They were on a good basis with the Foreign office, one branch of the German government, while another branch of the German government was carrying on negotiations and consummating an alliance with Japan. It is quite true that the good relations were kept going with China.

A. I don't hesitate one moment to say that there is no doubt that it was a change of policy, for instance, toward Russia and so on, but, you see, the policy was changed again later, with

Russia in '39. We changed it again the other way, you see, didn't we?

Ribbentrop's Unsuccessful Ambassadorship in London

Of course, you know in '35 we tried to get Baldwin and the Fuehrer to meet and it didn't go through. The Fuehrer was to some extent already inclined to think that the alliance with Great Britain would not go. So I told the Fuehrer I thought it would be well worthwhile, my going over to London and trying to find out definitely whether it wasn't possible, perhaps, after all, to get this alliance. In the meantime we had quite a number of friends over there. There was King Edward there, who was considered quite friendly toward Germany, and so on. And the Fuehrer quite agreed. So far as I remember, I think I thought it over a day or so. Then I went to the Fuehrer and said, "I have thought it over and I would ask if you agree not to make me Under-Secretary, but send me over to London." And then he said "All right." That is the way it was done.

Q. This is serious business, Herr von Ribbentrop, so you will excuse me if I now make a point which is perhaps a little indelicate, but you recognize, do you not, that your Ambassadorship in London was not successful?

A. Well, when I was made Ambassador, the British press and everybody, knowing that I had made the naval arrangement with the British Admiralty or the British Foreign Office in '35, welcomed my arrival in '36. Now, why my Ambassadorship was not successful, I think this is easily explained. The one reason, of course, was that we had at the time this very unfortunate nonintervention committee of Spain, I don't know whether you remember that, which was a very unfortunate thing because I was at the same time Ambassador with the British, or with the Court of St. James, and at the same time I had to follow up instructions of my government in the nonintervention committee, which was a sort of a League of Nations, having more or less replaced the League of Nations in London, because all sorts of international things were discussed, like Spain. The English at that time very often taking a stand with France, with Russia, and with the Red part of Spain, and against Franco; the Fuehrer, the Italians, taking a stand with Franco. I had, of course, very often to take a position against the British, which was most unfortunate and which, during my whole stay in London, interrupted very much my real work, which I was after, trying to establish good relations with Great Britain. That was very unfortunate.

Q. Was it your idea, or were you instructed from Berlin, to make the Nazi salute when you were presented?

A. No; I was not instructed.

Q. You were not instructed. That was your own idea?

A. Well, I can say that perhaps I may have been at fault in doing it. At any rate, it was considered only to be an honor to the British sovereign, nothing else, of course. I may say that perhaps it was not, in the diplomatic field, the right thing to do. I quite agree. Perhaps I might have omitted it, but at the same time it was considered only to be an honor. I may say this: In spite of what some people have said, the Marshal of the Diplomatic Corps came to me a few days later and said, of course, that the King considered it as nothing but an honor to him. He was very nice about it and he only wondered if some change was made, he would like to know about it.

Q. I do not want to press small things, or to be too personal, but the large point which I am trying to make is the incongruity between your repeated assertions that an understanding with Great Britain lay very close to your heart, and to your mind, and the conduct of your embassy in London, which was not successful.

A. I think I can answer you that very easily, you see. After all, this desire of coming to a close contact and alliance with Great Britain was very earnest. I spent ten years of my life in this and I think, in spite of the war and everything, there will be dozens of Englishmen who will confirm that. I have spent day and night of ten years to do that. Why it did not come off, goes to factors which were stronger than myself, I can assure you. I don't want to be too long, but, in short, I think one can say this: That when I was made Ambassador in London, I remember in '36, it was during the Olympic Games, and a very influential Englishman came to the Olympic Games, I don't remember, but I think it was even on my invitation. It was Lord Vansittart. I had a long discussion with him in the evening at my house and the next day we had lunch together alone. I had a very long discussion with him for many hours. I quite remember that. I was trying to induce him, win him over to come to this Anglo-German arrangement. He didn't move. It was like speaking against the wall. He didn't move at all. The Fuehrer had a talk with him, I think, already in 1936. There was a very strong tendency of very important Englishmen who already then took in their internal policy, if not outwardly, a very firm stand against Germany, thinking that one day this National Socialistic Germany would get too strong. I think that is the answer why I didn't have success in London.

Negotiations with England Regarding German Colonies

Q. You were speaking a moment ago of your efforts in the last week, and I think I remember reading in your previous testimony that you had in mind that England needed to return—Hitler had in mind, and you too—only one or two colonies for raw material purposes.

A. We would like to have had that.

Q. What did Chamberlain offer in 1938 in the adjustment of the colonial question? Chamberlain offered an adjustment of the colonial question in 1938.

A. Well, the only thing I do remember was what was once discussed, that the English did not want to give any colonies back. It was the idea of some combine of raw materials or something like that. Somewhere in Africa, in some way a combine of excess raw materials, more or less on the economic field, but there were no colonies offered, so far as I remember.

Q. You don't remember then, that when Dircksen came from Japan, on his way to London to take your post, that he was received by you and Hitler and reference was made to this offer of Chamberlain's and Hitler said that he would not answer it and that Dircksen said that this was startling to him, since it seemed very rude not even to answer such a request.

A. That is not right. In the first place, Hitler would never say that. He just wouldn't answer a thing. He would never say that. Secondly, it can't be right because I am pretty clear in my recollection, there was never a colony offered, never, never.

Q. Never?

A. No, never. Then it would have to be without my knowledge when I was not Foreign Minister yet, but when I was Foreign Minister, surely not. When Henderson came, or during the visit of the British statesmen, they offered in the old German colonies some collateral access to the raw materials or something of that sort, but nothing political or nothing territorial, of that I am sure. That cannot be right. I would remember that because it would be so important.

Q. Mr. von Ribbentrop, I do not have the feeling that you are being frank in your relation of these events.

[Another excerpt from this interrogation has been published as Document D-490, Vol. VII, p. 66.]

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 24 September 1945, 1415–1535, by Col. Howard A. Brundage, JAGD. Also present: S/Sgt. William A. Weigel, Court Reporter.

Responsibility for Arrest of Prominent Frenchmen

Q. [In English] Of course, you know Abetz who was in Paris?

A. [In English] Yes, of course I do. Yes.

Q. If you had sent him an order to arrest 2,000 people, you would know about that wouldn't you?

A. Let me think about that. Abetz? French people you mean?

Q. Yes, possibly French.

A. Now, let me think. I know that, well, two thousand, that is of course nonsense, but I know that there had been—I must think about that. There was a written order given by the Fuehrer that certain important political people everywhere should be put under guard—arrested and put under guard and a number of them also to be brought to Germany. That is right. Also French people. I know that, and it is quite possible that Abetz got such orders that he should look after and see what people there were who were liable to create political differences in France for Germany. If that is what you mean with having put people under arrest, that is quite possible that I played a role in that. That is quite possible. I remember that a general order was given to Holland, Belgium, and France, when there had been—I don't quite exactly know now the reason why it was done, but I know that quite a number of people—let's see, what was the reason? There was some special reason. Do you know that date when it was done? Wasn't it not very long before the invasion or something like that? It had political reasons of some kind, I remember.

Q. I think it was about '43.

A. Wasn't it later? I don't remember.

Q. Actually they were all put into concentration camps, weren't they?

A. I don't think so. I mean, for instance, I remember people like Daladier; he was not in a concentration camp. I know that quite a number of arrests have been done in France; that is possible, but that they have been put in concentration camps, I know nothing of that. I know a number of people have been taken to Germany, a number of people like Daladier. Who else? They were well known names, but they were put by special order, and Abetz had known that and can confirm that, that these people were to be treated well and put in good houses and so on, in villas, to be treated as well-known people, people who had been ministers or having official big positions.

Collaboration with Petain and Laval

Q. Did you have much difficulty with Abetz?

A. Difficulty? Yes. Sometimes we had.

Q. What was the nature of those difficulties?

A. Well, that is a terribly long story. You see, Abetz and I—at the beginning he was my man.

Q. Yes, I know he was.

A. We wanted to come to some arrangement with France, but the Fuehrer was not very much taken by that idea. I once got him so far as to go to Montoire. I don't know if you remember Montoire. There was a meeting with the Fuehrer at Montoire in the South of France when the Fuehrer went to see Franco. Petain went to Montoire and matters seemed to go rather smoothly although in Montoire I must say that a real collaboration with France and perhaps a very large measure of peace was in my mind very much. Petain in that first meeting and conversation with the Fuehrer was very reserved, so the Fuehrer rather cut short the conversation. It didn't last very long. The Fuehrer made certain advances to Petain, but he was very much reserved and the Fuehrer, just having defeated France perhaps didn't think that quite the right way. Though things went very smoothly, the conversation was cut rather short, so things did not run in the direction which we wanted them to. Petain was never a partisan of a real understanding to my mind — the Fuehrer also thought so—between France and ourselves. Then, of course, a number of things happened. Abetz was there. He was then installed. Then a number of things happened. The Fuehrer gave back the coffin of the Duke of Reichstadt.* He made his gesture to Napoleon. Petain was to go to the funeral at Paris and he didn't go and he told everybody he thought the Fuehrer would arrest him in Paris. Absurd, of course. That upset the Fuehrer very much when he made this gesture to France and Petain. So things didn't go very well in that direction at all.

Then, of course, Abetz always wanted to come to some arrangement with France, so did I. The Fuehrer got less and less friendly with that business. Then Abetz got into rather difficulties with the military people, I believe, always in France. He didn't match very well. So I don't know how it really came about, but after a short time you could hardly mention the name of Abetz with the Fuehrer any more, an experience which unfortunately, I have made with a number of my collaborators, because the people either on the military side of the SS—somebody I don't know who would—the reports would come in that Abetz always wanted to adjust things and try and find a way with the French, and the other wanted to go the stern way. Perhaps they were right. Perhaps in their executive way they saw things didn't match. I don't know. I wouldn't like to say that Abetz was right. Abetz got into an awful difficulty with the Fuehrer. The Fuehrer would say, "Well, Abetz said this." He wanted to try on various occasions to help. He always did his best to help. It was very difficult for me to find the balance between what Abetz did in Paris and to keep him in his post and to find the leaning with the Fuehrer again, because I wanted him to stay there, for he was no doubt an expert. But, of course, sometimes he did things which were, I should like to say, chiefly from the point of the Fuehrer, not very convenient.

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* The son of Napoleon I and Maria Louisa of Austria. At Hitler's order, the Duke's body was taken from the Hapsburg family vault in the crypt of the Chapel of the Capuchins in Vienna, and on 15 December 1940 reinterred in the Invalides near the tomb of his father exactly 100 years to the day after the body of Napoleon I was finally laid to rest in that sanctuary.

Q. How about from your viewpoint? Were you personally satisfied with his operations?

A. I had a conversation and we had what you might call rough minutes together. He did things which were really more small things which were used against Abetz in Berlin or in the headquarters. Let me think of something. For instance, there was one great tremendous difficulty which we had and that was at that time the propaganda ministry wanted to put their foot into Paris. I don't know if you know about that. There was always a great antagonism. If something didn't match well they would say, "Well this is Abetz who does it." If something didn't run as we wanted in France or Laval didn't do as we wanted or Petain, it was always Abetz. Petain and Laval, I must say frankly that the French don't like them altogether today, but they always remained Frenchmen in their hearts. I must think of that—they always remained Frenchmen.

Q. You mean Laval too?

A. Laval also to a certain extent, yes. Petain absolutely, I should say, because Petain never played with us. I mean I think he knows that. He never played what you call a real game of rapprochement between the two countries. Laval tried for awhile but he also had his large reserves.

You can imagine the difficult position Abetz was in. He wanted to play the game with France, but the Frenchmen really didn't want to play the game with us. Also Daladier at the time didn't want to play the game with us, really, to come to terms with us. They always made their reserves. And Abetz wanted to get that. He tried to present it to the Fuehrer, but it never worked out.

Q. Was that because of the size and scope of your demands upon them where they just couldn't do it?

A. This was never scoped out, even by the Fuehrer. But you see, Colonel, how difficult this French situation was for us. I can tell you in one example. Most people never quite realized this. There was the mistake of Abetz. Abetz looked to the French people, so to speak, as if they were 100 percent pro-German. That was his way of looking at things. But he sometimes in wanting so much to come to this understanding, which I also wanted, went sometimes too far and saw things at a wrong angle. To show you the way people really thought in France, in 1943 the collaborationists gave a memorandum to Abetz. I think it was to Abetz. It was an official sort of memorandum which was passed on to me in which was more or less—of course, they took it for granted that even the collaborationists would keep Alsace-Lorraine for France. That was the real bad situation. It was the great difficulty of the whole situation. Everybody went against Abetz because he was a man of the Foreign Office, and they said that of me. I had very few friends. There wasn't one of the big men, so to speak, not one—I don't want to mention names—but of the ten or twelve well known names in Germany, there was not one who was with Abetz, while military or propaganda or from what angle it came, everybody went against Abetz. They always said something against him. The trouble was he had a French wife. I don't know if you know that. I always kept him, but I had to push him to make him stand like that. Little things happened which made the Fuehrer wild. He sent out invitations in the German-French language, that sort of thing; or his wife at a reception would say things. And these things he did which made the whole people pounce on him like that. I had to put him there because I wanted him to stand there. That was because he wanted a French-German understanding. I think that was the whole situation.

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 4 October 1945, 1415–1650, by Col. John H. Amen, IGD. Also Present: S/Sgt. Horace M. Levy, Court Reporter.

Excuse for Occasional Memory Lapses

Q. [In English] Is there anything the matter with your recollection, other than what happens to any normal person?

A. [In English] I think I have asked Major Kelley * to tell you about it. I mean, I have been taking sleeping remedies for four years and especially these bromides. This had a very bad effect, not only now, but for the last two or three years already.

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* Nurnberg Prison psychiatrist.

Q. I know, but I don't think that bromides would eliminate from your mind any of the things that are of major importance, that you were dealing with at the time. For instance—

A. It should not.

Q. For instance, the Major explained to me—

A. It should not be so, Colonel, but of course, it is possible because I have not recollected quite a number of things, absolutely not recollected. I just mentioned, I think, one fact this morning. I was asked here a few weeks ago about the Austrian question, and I did not remember at all, for instance, that there had been a luncheon with Schuschnigg. It absolutely escaped my memory, and furthermore, I did not know at all that there had been written agreements. I don't know today that there had been written agreements. I have been told so.

Q. And you think that is because you have taken bromides, is that it?

A. I don't know. I am afraid I have had that experience very often, not only now, but during the last two years. This can be testified very easily.

Q. What kind of bromides do you take?

A. I have taken every evening what you call "bromo-amitol", or something, but will you talk to Major Kelley about it?

Q. I have talked to him about it and he said there is nothing to that. He said that if occasionally you took too much of it, your condition might be that of a person who has had too much to drink, but it wouldn't have the slightest effect on your memory, as far as the daily events are concerned.

A. Well, he told me quite differently and the German doctors, I can tell you—and I discussed that with Major Kelley, I think twice already—and I know that the German doctors told me that absolutely bromide had this effect on the brain; and I think this can be easily testified by many people.

Q. It might be that you took too many bromides, but I still don't think that it removed from your mind the recollection of certain specific matters, which were constantly brought to your attention.

A. I am sorry to say, the most extraordinary thing is that even very important events absolutely escaped my memory entirely, but I have said that repeatedly, that when I came back into the prison, that then I thought about a certain matter and suddenly this fact came back.

Testimony of Joachim von Ribbentrop taken at Nurnberg, Germany, on 5 October 1945, by Mr. Justice Robert H. Jackson, OUSCC.
Also present: Colonel John H. Amen, IGD; OUSCC Colonel Howard A. Brundage, JAGD; OUSCC Pfc Richard Sonnenfeldt, Interpreter; WOJG Jack Rund, Court Reporter.

"The Fuehrer Is Dead"

Q. [In English] I am Justice Jackson, and I have a letter which you addressed to me under date of 2 October 1945, in which you make certain proposals. I want to ask you some questions about various statements in the letter, and I will tell you frankly why. We are to meet within the coming week to determine what we will do as to the indictment of yourself and others as war criminals, and I want your proposal in as definite form at the time I go to the meeting as I can have it. There are some things I want to ask you because I don't understand just what your proposition involves. Some of them I will ask you because I want to know what you know about them. One of that class of questions is that several times you say here, "The Fuehrer is dead." I want to know what information you have about that.

A. [In English] For my information, I may perhaps say this: I know definitely he is dead, because when I left him—I think it was on the 23rd of April in Berlin—he told me that he would not leave the Reichschancellery. The definite information I know, or I have about it, is this: That when I was at Ploen with Admiral Doenitz, he received a telegram—or he had received a telegram by Herr Bormann, stating that the—I think it said, "The testament of the Fuehrer was in force and that he would"—I think the quickest possible way—"join Herr Doenitz"; or something like that. And from the words of the testament—I mean, that is, the succession of Doenitz is in question on that, of course—was the definite news that he was dead. And I think it was the 30th of April. I think it must have been the 30th of April. I am not quite sure.

Q. Your knowledge is based on those facts?

A. On those facts, but I am absolutely certain, I think he is dead.

Q. Was there any understanding or discussion of a suicide pact if things went wrong with the war?

A. That he would commit suicide?

Q. Yes. Have you ever had any understanding to that effect?

A. We all were certain all along, during the last weeks, when things went wrong, that the Fuehrer would not survive. We were convinced of that absolutely, and I can tell you that I think it must have been the 20th or 21st of April, one or two or three days before I left Berlin, he evidently only then saw that the war was definitely lost and he left, I think, the Military Operation Room saying he wanted to shoot himself. That was two or three days before I left.

Q. But he didn't do it at that time?

A. He did not do it at that time. No.

Q. Was there any understanding or agreement that he, or any others, would commit suicide if worst came to worst?

A. I don't think so. No. No agreement.

Ribbentrop's Ignorance of German Foreign Policy

Q. In your letter to me you say that you are ready to supply information, and to present objectively the course of foreign policy followed by the Fuehrer, insofar as this policy was evident to you, as his foreign minister. Do you imply by that, that you are not familiar with his foreign policy, or that any part of it was concealed from you?

A. I was familiar only with a certain part of his foreign policy. I never knew or heard at all of him, or of his final conception which he really had as to the formation and how the Reich, the definite Reich, was to be formed, and so on. I think, personally, that in 1938 when I became foreign minister he told me that he wanted to get a certain number of foreign policy aims by way of negotiation and by diplomacy. This was Memel, Austria, the solution of the Sudetenland, and the corridor of Danzig; and this was more or less his program which he sketched out for me in 1938. I think he had decided in August 1939 to settle the Polish problem, that is to say, the problem of Danzig and the Corridor. I think, probably—and I must say that quite clearly—against my views—he thought this probably would go without involving a big war. I think it was on the 25th of August—I am not quite certain about that at all—when the Polish guarantee came from Great Britain, the news came military operations had already started against Poland. I went to the Fuehrer with the news and proposed to him and said this to my mind meant definitely war with Great Britain. The Fuehrer, thinking it over only a few minutes, quite agreed with me and took back the military operations with Poland. I think this was on the 25th of August 1939. He then entered into negotiations—I think it was so—he was decided to settle the problem also on the military basis, but he still hoped that in some way things might be settled in some other way, and he hoped perhaps—what always has been his aim all along, and I might say has really remained his aim during the years of the war—he occasionally talked about it—he still hoped he might be able to get perhaps the alliance with Great Britain, which had always been his great aim. Then, I think, he stopped that, hoping perhaps Great Britain would consent in some way to his solving the Polish problem either diplomatically, or probably militarily. So, negotiations went on with Mr. Henderson—and I am sorry I have not all the detailed recollection because the Fuehrer handled it from the date after he took back his advance [Word "advance" supplied by interpreter] on Poland. After he took that back, he took entire charge of the affairs himself, and evidently he did not feel very well about it. Perhaps it was the military, but he took matters entirely in his hands and I think Henderson, as far as I remember, went to London with the proposal of the Fuehrer and came back with an answer which was rather negative and which, at any rate was called by the Fuehrer, negative.

Q. As I understand you, at all times you knew that his program meant war?

A. I may say this—

Q. Is that not true? Try to answer my questions if you will. It will save us a great deal of time.

A. I was of the conception that the Fuehrer himself wanted to get all these vital problems of Germany in order by diplomatic means. Of that I was convinced, that he wanted very much to get it diplomatically.

Q. Will you give me an answer to this question, which you can answer yes or no. When you became foreign minister, and his aims were outlined to you, as I understand it, you did not believe that it would be accomplished diplomatically, and you knew that meant war.

A. No. I must say no to that.

Q. I misunderstood you.

A. I am sorry. I did not mean that. I hoped to get these things diplomatically.

Q. Do you mean to imply in your letter that you did not fully understand the foreign policy, and that the foreign policy was not fully imparted to you?

A. I must tell you quite frankly that apart from that which I just told you now, all the further aims of the Fuehrer which he might have had and which I only heard during these interrogations here, and all the documents which were supposed to be in there, the Fuehrer never disclosed to me any of his definite big policy, or the future formation of the Reich. There was the question occasionally—not often, but once or twice he mentioned it, the idea of creating the German Reich, the greater Germanic Reich was the idea, but he never revealed to me what this conception really meant, or what he understood under this conception. And I may say I have had the feeling all along that he was during the war—he said that once or twice—the military timetable of the General Staff came up, and he was driven to one decision after another. His conception later on was a very much larger one.

Q. Do you really want me to go to my associates at this meeting and tell them that it is your position that as foreign minister of the Reich you didn't know what the foreign policy was?

A. I am sorry. I must say so. I am very sorry. The Fuehrer never revealed his definite aims to anybody.

Q. You say to me, on page 5 of your letter, that "My goal as a diplomat was to attain diplomatically the goals of Germany." Yet, you say now you didn't know what the goals were.

A. I mean, the goals that the Fuehrer disclosed to me.

Q. You mean the first steps?

A. Yes. These goals.

Q. Further than that you had no knowledge of the foreign policy of the Reich?

A. I personally don't think the Fuehrer had a real conception of it. Of course, in the course of the war, the conception became a different one. For instance, after the Polish war, the conception came so that the Fuehrer wanted to have a frontier then with Russia and create—he wanted a Polish State created, but the Fuehrer made a General Gouvernement out of it; and after the French victory, over France, I know there have been all sorts of conceptions, but nothing really about Belgium, Holland, or France, became definite, and it always remained open—and the conceptions which he occasionally—but I can say most definitely, I never discussed with the Fuehrer, or he never discussed anything with me of the definite shape of what he called the Definite Reich, or Gross-Deutsche Reich, was to be; but the vague notion I had that he had in his mind a Latin combine; some sort of Germanic combine, in which countries like Norway, Denmark, and Holland, and so on, would have in some way a link, or a closer connection with Germany of some sort. And then, he always talked of the future and still getting in line with Great Britain. That was the conception he had. Then to the East, I must say, after the Russian War he had the idea that he wanted absolutely to have the Ukraine. That was his goal, for food purposes.

Ribbentrop's Differences with Hitler on "Weltanschauung"[*]

Q. You say in your statement that "I had some very serious divergences of opinion, and differences with the Fuehrer in matters of basic doctrine, as well as the foreign policy." Do not bother to argue them, but just enumerate for me what those differences of opinion on basic doctrine were.

A. My differences of opinion in basic doctrine were, especially —how should I explain it?—That only I was not one of the old party followers of his in 1923. I came to the party in 1932 and, therefore, I never personally—and the Fuehrer knew that very well—have had the conception of Weltanschauung, as I was supposed probably to have. The Fuehrer knew that and tolerated it, and most people also knew it. Where I didn't agree with him fundamentally was in the church question, in the Jewish question, in the whole development of this. We knew we had a Jewish problem in Germany. I knew that, and some solution had to be found. I was also of that opinion, but the whole development the Jewish question took; I was entirely against it, and I told the Fuehrer that repeatedly. Also, in written documents which I have.

Q. Have you any copies of the documents which you submitted?

A. No, but my collaborators can testify to it. I have none at all.

Q. Who can testify to it?

A. I could name you Ambassador Gaus who could, and I could name you probably one or two of my secretaries.

Q. Let us name the people who can testify that you took any affirmative steps whatever in those matters.

A. Ambassador Gaus.

Q. Where is he now?

A. I have never heard of him again. I don't know where he is, but I suppose he is easily to be found. Then, my secretaries.

Q. Named?

A. Frau Blank. Then, may I perhaps think it over, and I can perhaps name you a few more later on.

Q. You have named one secretary. The other one was—

A. That was Frau Krueger, and I may say this. Perhaps that until about 1934–5, the Fuehrer was comparatively easy to talk with on these matters and I had at that time, for instance, quite a number of Jews who were in my house, and the Fuehrer tolerated that, and he even saw a number of Jews himself, through my intermediation in 1933–4, and probably as far as 1935. When I came back from London, things were changed, and it was very difficult, but I have through the war repeatedly brought forth this question, and as I said, also have in writing asked the Fuehrer to come to an evolution—instead of this revolution, to an evolution in the question of churches and of Jews, because this was an intolerable burden to foreign policy.

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[*] World-view or philosophy.

Q. And your advices were that that policy was making Germany enemies abroad?

A. As I said to the Fuehrer once or twice—I remember something I said—that the enmity of the Jews alone, and the churches, would mean the enmity of a big power, and so forth. I said that once or twice to him.

Q. And you are surviving to face that enmity, and he isn't?

A. Yes. That is right.

Why Ribbentrop Did Not Resign

Q. What did you ever do about it, when your advice was disregarded?

A. It was—I can tell you promptly—it was impossible to do anything at all.

Q. Did you ever resign?

A. No.

Q. Did you tender your resignation from office?

A. Well, I resigned once, in 1941, in which I had a terrible difficulty with the Fuehrer, and I may say—

Q. What was that difficulty about?

A. The difficulty in 1941 was this: The occasion was a trifle, but it had accumulated for quite a long time and it was this: That apart from the question of Weltanschauung, I saw that in the whole world these Jewish people—and I have always said to my collaborators, and they can testify to it, that we have taken the whole world on our arms. I have said that a hundred times, that this question of Weltauffassung*—and, furthermore, perhaps I can explain it that way—that the elimination [word "elimination" furnished by interpreter] myself of so many important questions of foreign policy after the outbreak of the war was creating and giving to me the gravest anxieties. I may perhaps explain to you. Already before the war, to a certain extent it may perhaps surprise you, but I, as foreign minister, have never seen one speech of the Fuehrer. Not once. I have once seen it and he once complained about that. You see, the way he had matters in his hands, he told me he did not need a Gouvernante. I mean, he was absolutely 100 percent—he dominated [word "dominated" furnished by the interpreter] the situation, and it can perhaps only be compared to what I have seen, for instance, of Stalin, and Moscow, and something like that. It was absolutely dominating, and I wasn't in. You see, his Saarbruecken speech — I don't know whether you heard of it.

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*See Ribbentrop Interrogation, 17 Oct. '45, p. 1255 of this volume.

Q. But even a dominator has to have people understand what he is trying to accomplish if he is going to have it done.

A. Yes.

Q. How did you carry out his policy if you didn't know what it was; and, how could you disagree with it if you didn't know what it was?

A. May I say this; Before the war it was so, that, for instance, at the Saarbruecken speech was the turning point in the British policy, for instance, but—

Q. Didn't you know about that speech?

A. I never heard about it. I was amazed when I saw it in the paper.

Q. You mean that as foreign minister you first read of his speech in the newspapers?

A. Everybody can confirm that from my collaborators; everybody. I have never seen one speech of the Fuehrer during the time I was foreign minister, beforehand. Not one phrase which he made in his foreign policy.

Q. And you didn't resign?

A. I will come to this now.

Q. Tell me now about your resignation.

A. Before the war it was very difficult to follow it, because the cancellation of the naval arrangement, which I made, I heard sitting before the Fuehrer in the Reichstag. I heard it for the first time in the Reichstag and I never heard it before. That is the way the Fuehrer dominated the foreign policy. This was before the war. During the war the question had been this: The Fuehrer had during the war taken over matters. For instance, when Poland was taken, he made the Grande Finale. Then, when the Norway incident came, I only heard that very late. I think it was a day or two before, and he went in there—and with the moment we occupied Norway, from that moment on the same thing that was in Belgium and Holland; the Foreign Office was discarded and we had no more to say in these countries. In France I managed to get an ambassador in, but he had it very difficult. Then, when the war with Russia came, the East Ministry was created, and the whole Foreign Office was discarded from the whole sector of the East; and in all these things it, of course, created tremendous difficulties. For instance, in Sweden, Finland, Turkey, and so on we had great difficulties all through there.

And all these difficulties had accumulated, and on this occasion I personally lost my temper a little bit. I had a great deal of difficulty with the Fuehrer and I asked to resign, and the Fuehrer had accepted my resignation, but then after he had—he was not well, and so I asked him personally to take back the resignation. I personally asked him, myself, that it—

Q. What do you mean, "he was not well"?

A. He asked me then—he was not very well with his head. He had something—he asked me whether I wanted to—I was his most difficult subordinate [word "subordinate" furnished by interpreter], and that I hurt his health, and so on; and so I was very much moved, and I asked him personally to take back the resignation, and so I stayed in my office.

Q. Then, whatever difficulties you may have had, they were not sufficient to cause you to actually leave the Ministry?

A. I did not leave the Ministry. I may say perhaps one more thing; that since 1941 my influence was very small, if any at all. But I must say this, that on several occasions—he did not ask my resignation, but my people know that also, that I asked him, the Fuehrer, if I couldn't go for a half a year to the front—four or five times—but I asked this in such a way that it was not meant as a resignation.

Q. Let me ask you, did you dare to resign?

A. I did, in 1941.

Q. What would have happened to you if you would have resigned?

A. I don't think anything would really have happened, but of course how things would have gone, I don't know. It is very difficult to say that; to answer that.

Q. Did you stay in the cabinet through fear?

A. No, I wouldn't like to say that.

Q. Did that enter into it, and is that a part of it?

A. No, I wouldn't like to say that.

Q. Then there was no reason why you couldn't resign if your disagreement had been a basic and serious disagreement?

A. Well, I would like—

Q. Just answer my question, and it will save a great deal of time. There was no reason why you couldn't have resigned if you had had a disagreement sufficiently grave to have caused you to part company with the Fuehrer, was there?

A. I could have resigned, but I felt it my duty as a patriot to remain as foreign minister. I must say that.

Ribbentrop's Ignorance of What Went on in Concentration Camps

Q. You say in your memorandum to me that "mistakes have certainly been made on the German side." I wondered what you had in mind, since you didn't specify?

A. You mean mistakes altogether? Well, of course, I meant especially the concentration camp, and these things; but of course, there were also other mistakes.

Q. Would you specify for me now the things which you conceive of as mistakes on the German side?

A. I would like to say first, of course, I was always against these, or any, too harsh measures on the question of Weltauffassung. I have continuously used that picture with my collaborators, that one day things might—I am sorry, and it is dreadful to think to a certain extent it has become true—that the Weltauffassung—and that some people may remember back and hold up the flag of Weltauffassung, and the German people may be gone; and I have repeatedly said that to my people; and, therefore, I was against measures which were going in that direction. Whether I was right or not, I don't know, but it seems I have been right. But I was, of course, very much against the measures which were taken, of concentrating all people in the camps, and when I heard for the first time—this was after the taking, I think, of the concentration camp of Maidanek—through reports that came from our diplomats abroad, where this made a tremendous uproar; of course, I was very much upset about these things which were said in these reports.

Q. Candidly, were you upset by the uproar, or were you upset by the facts?

A. By both. Very much by both.

Q. Do you want us to understand that you didn't know what was going on in those concentration camps, at least in a general way?

A. I can assure you that I had not the slightest idea these things were going on. We knew there were things going on in the concentration camps—I mean, people put to hard labor and so on—that we knew, but we had not the slightest idea these things were going on.

Q. Didn't you have American newspapers, for example, clipped and sent to you by American representatives?

A. No.

Q. Didn't you keep track, and wasn't it part of your duty in the foreign office to keep track, of foreign public sentiment?

A. Yes, it was my duty.

Q. Did you not know that, repeatedly in the American press, reports were given that these things were going on in these concentration camps?

A. I must say I did not get one of those clippings. I must say that.

Q. How can you expect us to believe that what was generally known in the United States following 1933, or as soon as these camps began to be opened, wasn't known to you as a responsible head of the German Government? How can you ask me to believe that, Ribbentrop?

A. It is very queer, but it is quite possible, because it has been the case. This was so much tied up, these things, and especially from all people. I mean, for instance, if I would have wanted to visit something like a concentration camp, it would have been quite impossible.

Q. When did you begin to suspect there was something wrong about the concentration camp program?

A. You mean that these—

Q. When did you first begin to oppose it? You said you opposed it. When did you first begin to oppose it?

A. I don't know. I can't tell you exactly. I know that the biggest shock which I got was from this—was the first I really got—also in the reports from my diplomats abroad—was when the Maidanek—this was in Poland—when the Russians occupied that. That was the first picture I really got.

Q. That was toward the end of 1944, was it not?

A. That was very late in 1944.

Q. You say up to that time you had no idea that there were tortures, and exterminations, and that sort of thing going on at these camps?

A. One heard occasionally the talk that there were things going on which were not in order, and so on, but this was so much closed up that one really never heard anything definite about it. It was entirely closed up, and I think very many other people can confirm that to you. I heard vague rumors, and things like that, but we never heard anything definite of what was really going on. The source of his information was, especially—as all the source of his information—always 95 percent newspapers I should say. The Fuehrer got most of his information from newspapers. He got clippings from the Special Department. He didn't get that from ourselves; he had a special office, a special department—Reichs Presse Agent it is called, who made all these clippings for him, and I say, most of his decisions, and everything of his political conceptions — foreign policy — were taken from this office and the newspaper reports which he got from this office.

Q. Who ran that department?

A. Dietrich, the Reichs Pressechef.

Q. Don't you recall that President Roosevelt protested against these concentration camps, and the treatment of the Jews and minorities?

A. Yes, I remember, and I recollect that. Yes.

Q. Did you not take any pains at that time to look into these matters and see what was going on?

A. Every possibility—I always looked after one thing; that every report of such kind which arrived was brought forward to the Fuehrer, but I can tell you it was extremely difficult in 1938 even to mention the subject of Jews, because it was almost impossible to mention the subject with the Fuehrer. He was—I don't know whether you can realize what an overwhelming personality he had. It was quite possible. If he didn't want to talk about a matter, to even get it to him was quite impossible. It was quite impossible. I was perhaps one of the few who tried it.

Q. When a matter became so important and so well-known that the head of a Foreign State protests, wouldn't it be your function to look into the matter and ascertain whether the Foreign State head has misrepresented the matter?

A. I don't know now. I may perhaps think it over. It is possible I did that once or twice. I don't remember now.

Ribbentrop's "Opposition" to Policy toward Churches

Q. You say in this letter to me that you were "absolutely opposed to the development in the policy toward the churches." What was the policy toward the churches, to which you were opposed?

A. The policy towards the churches was—I only overlooked it in a large way, and in a way because I was not very much informed about internal matters, but I saw it when it came through the nuncio, or we heard it occasionally through the connections we had with Protestant churches to foreign countries, and so on. The general policy was in that direction in order that the tendency—the Fuehrer was of the conviction, I would like to put it that way, that the churches—and this was also his conviction about the Jews—in his big struggle which he always considered his main struggle, that was always his conception he had in his mind. There were disintegrating elements in the fight of the national states against the dissolution through communism. That was the big conception which the Fuehrer had, and everything probably was based on this one big conception always, and at the end of the war he focused always entirely on this point and he was of the opinion that the churches also were a part—who were in the struggle against dissolution of the German national people which was coming from the East—would play a part of weakening the German peoples in this mental and probably also physical fight. That is the way I would like to put it.

Q. You mean that he thought the Catholic church and the Communists were working together?

A. He sometimes—yes, sometimes I even heard that said, to a certain extent. That he thought—I remember the Fuehrer once said something, but I must say I never quite understood that, the idea that the Catholic Church in Germany was going back he said to the war Christendom—to ancient Christendom—[words "ancient Christendom" furnished by interpreter] that there was a certain similarity between ancient Christendom and the Communist doctrine. I remember him saying it, and I never quite understood that, as a matter of fact, but he mentioned that occasionally, and one thing I do know—and I must say it was in 1932 a very difficult problem in Germany — the Protestant churches were empty. I have never been a partisan of the church for a long time, but I perhaps may say this, that my wife and myself during the last five years of the war, when we saw how the tendency of the whole church—an antichurch policy—went, we repeatedly said to each other: "We are now, where everybody is going out of the church, we are going to enter again now." So, because we saw it would have a disastrous effect the way things were going—the Fuehrer was, of course, of a definite opinion on that.

Q. What was the policy that he was going to follow toward the church that you objected to?

A. It was really the general attitude, I mean.

Q. What was the attitude to be? Whether he prayed or didn't pray, I am not interested in it. Whether he believed in the church or didn't believe in it, I am not interested in it. But what was he going to do to it? That is what I am interested in. I am taking it that you were interested in the policy, and not reforming the Fuehrer.

A. How should I explain that. There was going on this—that there was certainly a persecution of certain clergymen and which, of course, this persecution brought in again that certain clergymen would make speeches against National Socialism, and by this way quite a number of them were in concentration camps, as you probably know—were put in concentration camps, and this would make the other priests again preach against National Socialism, and so on, and this would show in the sort of dissolution tendencies in the spirit of the people, and also of the Army. I heard that from various places.

Q. You thought it was bad policy to put the priests in concentration camps?

A. Yes. Very bad policy. I tried, as a matter of fact, for quite a long time to get a number of priests out, but I only managed in the last month to get a few hundred out.

Q. Then you knew over a considerable period of time that the church was being persecuted and that the concentration camp played a part in the persecution of the church?

A. That I heard; yes.

Q. You were satisfied that was true?

A. I heard of it occasionally.

Q. But you were satisfied it was true, and you protested?

A. What I did in it was this: You see, I tried to help to get some of the people out; but in all these questions, I am sorry to say—

Q. You were well aware that the concentration camp was a savage place for them to be, were you not?

A. (No answer.)

Q. You knew that the concentration camp was a torture place.

A. No. I didn't know that. No, that I didn't know.

Q. Why did you want to get them out then?

A. I was always personally—

Q. What did you think the concentration camp was for? Tell us what you thought a concentration camp did?

A. Well, a concentration camp to me was—my conception of what I always figured out—people put in there in order—I mean, working like, let us say, like a prison—but some sort of a prison.

Q. That is all you thought of it as; just a prison?

A. Yes.

Q. You knew there was a great fear of the concentration camp all through Germany, did you not?

A. Well, it is very queer that the first time I really heard of this fear was during the last month, when a sister-in-law of mine was interned. A sister-in-law of my wife was interned, and I heard then really for the first time, of this great fear, but we were, I must tell you quite frankly—

Q. You mean, you felt it for the first time then, do you not? That was the first time it really came home to you?

A. That is right. That is quite right.

Q. But you knew it was happening to a great many other people, did you not?

A. Well, we were so—I can tell you this—we were so closed up. I was working between 14 and 16 and 18 hours, sometimes, at my foreign policy, that I hardly—I must say that quite frankly—all during the war I was generally out in my quarters. I was not in Berlin, or at the Fuehrer's headquarters, but in my business headquarters near there, and I very seldom knew anything that was going on in Germany. Very seldom. You knew or heard very little about it.

Q. All these things that were going on in Germany with reference to the Jews and the Catholics and the Protestants became known abroad, apparently, before they did to you; but, you heard of them through foreign affairs, did you not? They came back to you from abroad, did they not?

A. Well, it is quite possible that we got certain reports occasionally. That is quite possible, but generally spoken, we felt all the time that every persecution of Jewish and church question was a tremendous handicap in foreign policies. If I may tell you a few examples: I remember when we made the Spanish policy, I know the Catholic problem played one of the most important parts that things did not go as we wanted it. I know in the Swedish problem, the Jewish part played a great role, and in many other problems we felt and I saw almost every second or third step we took in foreign policy, I saw one of these problems facing us.

Q. Did you receive from the Vatican a communication dated 2 March 1943, calling your attention to a long list of persecutions of bishops and priests, such as, imprisonments and shootings and other interferences with the exercise of religious freedom?*

A. I don't recollect it at the moment, but I know that we had protests from the Vatican for—I mean, we had a whole desk full of protests from the Vatican.

Q. Did you investigate them to ascertain whether they were true?

A. Well, I will tell you quite frankly it was impossible for me to confront the Fuehrer with the Vatican question. It went so far that I may say this: When the East Ministry was created in 1941, I think,it was in 1941, that the Fuehrer made a rule that in everything that we had to treat—yes, he wanted to make a rule that all the Vatican treatments with the whole East, for instance, was not to be made by us any more; so that to approach the Fuehrer with one of these protests was futile. They continuously went to the Fuehrer and they also went to the party councils—I know to the party—but to approach him in any of these matters to do away with it, it was quite impossible, and he said to me once or twice, "This is merely an interior matter which is not a concern of yours." Repeatedly.

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*Document 3264-PS, Vol. V, p. 1018.

Q. Did you reply to the Papal protests?

A. I think there were very many we did not reply. Quite a number.

Q. Did you reply to any?

A. I don't know now exactly, but there were very many we didn't reply to.

Q. And, so far as you know, the protests were based on facts?

A. (No answer.)

Q. You had no reason to doubt that the communications from the Vatican reciting atrocities against priests were true, did you?

A. It may perhaps seem strange, but I don't remember, personally. I don't think—I have perhaps seen one or two, but I have hardly seen these protests at all.

Q. I thought you said there was a whole desk full?

A. Yes, but I know—

Q. You know, Ribbentrop, that your relations with the Vatican were an important part of your foreign policy. Weren't they?

A. Yes, sir.

Q. You couldn't hope to have good relations in some quarters of the world, if your relations with the Vatican were bad, and that was particularly true of South America, was it not?

A. Yes, I know.

Q. And, you were particularly anxious to cultivate South America. Now, do you mean to say you didn't even read a protest from the Vatican that came to your desk?

A. It is really true. It is so that the Fuehrer took such a stand in these Vatican matters that from then on they didn't come to me any more.

Q. I am not interested in the Fuehrer any more. Let us get down to this part. If those protests were based on misinformation, it was your duty as foreign minister to convince the Vatican that it was being misinformed, was it not?

A. Yes.

Q. Did you take any steps to ascertain whether those protests were based on truth?

A. I didn't because the Fuehrer didn't want it. I must say that quite frankly.

Q. You took no steps to ascertain whether they were true?

A. Excuse me. Many timely steps have been taken, but I am sure in many, many cases—you see, the nuns; for instance, where the nuns would come and my people would discuss it with them, but it was impossible for me to approach the Fuehrer with one of these things.

Q. Do you mean to say that you couldn't even discuss with the Fuehrer your relations with the Vatican, as important as the Vatican relations were to foreign affairs and to the rest of the world?

A. I must say, absolutely, 100 percent, yes.

Q. And you thought that man was the man to whom you owed unquestionable obedience? A man who took that position?

A. You see, his view was—

Q. Now, in all candor, did you think that he, taking that position, was a sane man to be running the affairs of a great country?

A. I have had hundreds of sleepless nights about it, I can tell you.

Q. Not enough though to leave his government?

A. No. Therefore, we—

Q. Didn't you recognize that this was a reckless course that was going to bring most of the world on to Germany's back?

A. (No answer.)

Q. Did you not think you had an important duty to the German people, if this man was running that kind of a course with foreign affairs?

A. It was very difficult for me, you see. I might perhaps say again the conception which the Fuehrer always brought forward, again. He said, "The only thing which must not happen to Germany is that it becomes communistic, and in order to be strong enough to stand against this doctrine"—that was his—absolutely his creed—"we must simply, without thinking, discard any problem which has the possibility of weakening Germany in the struggle." This was always his conception.

Q. You don't for one moment think that the Catholic Church and the Communist Party were cooperating in any way, do you?

A. No, I don't think so.

Q. You recognize the Catholic Church as one of the bulwarks in the country and in the world against Communism, do you not?

A. Yes. That is also my view.

Q. You cooperated and carried out a policy based on a basic misunderstanding of the nature of the Vatican's attitude. Is that correct?

A. We all believed in the Fuehrer.

Q. Tell me whether or not you read that document* when it came to the foreign office. The document was furnished to me by the Vatican, and that of course is a translation.

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*Document 3262–PS, Vol. V, p. 1015.

A. [Witness reads document] I may say, I don't at the moment recall this specific document; but I recall this, that it must have been in 1943 that the Nuncio, this Orsenigo with whom I had occasionally these discussions, he came to see one of my people about the Warthegau, which made such great difficulties with the Vatican, and I know I tried very hard at that time with the Fuehrer to get control in the Vatican matters about all the countries which were not the old Reich [words "the old Reich" furnished by interpreter], which were the occupied territories; like Poland, and like the East, and other territories in France, and so on; but I remember that the Fuehrer was very displeased at that moment, and he made a rule—just particularly whether it was this one I can't say, but it must have been about that time—I can't say it was this time, of course, but it was either 1942 or 1943—he made a rule from that moment, that I was to send a note—I think it was a note—to the Vatican, that if the Vatican did not recognize any of these German political changes, the Reich would in the future refuse to negotiate with the Vatican on any matters except the old Reich. I fell very flat with the proposition of trying to get those things more in hand, and I may perhaps add that this has also once been a topic when in 1938 or 1939 I went to Rome. I made then an effort to get a nearer approach with the Catholic Church. I paid, with the consent of the Fuehrer, a visit to the Pope, and to the Vatican, hoping afterwards, perhaps to find some way of coming to a new agreement, a new concordat [word "concordat" furnished by the interpreter], but things didn't come off.

Q. But you did reach a concordat with the Vatican, did you not?

A. Yes. That was before. That was made, I think it must have been in 1933, 4, or 5, or something like that. There was a concordat, but it didn't work very well.

Q. It was not kept by the German Government, was it?

A. That is possible, yes.

Q. You have no particulars in which the Church failed to keep its agreement, do you?

A. That I don't know; I can't tell you; but I know the Party always said they have not kept it, but I must say I don't know any details about it.

Q. Were these protests, by the Vatican, answered?

A. These here, you mean (indicating document).* I should say that probably one of these protests—I don't remember exactly—probably I sent once—I think I sent the whole bunch of protests to the Fuehrer, and also to the Partei-Kanzei, so that they should see what was going on, and that brought forward this definite note of the Fuehrer which I think he dictated, and at any rate he gave me exactly what I was to do so we could not from that moment discuss with the Nuncio any more any questions about the out-Reich. That was the effect which this had when I presented it to the Fuehrer.

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*See document 3263–PS, Vol. V, p. 1017.

Q. So the official answer of the German Government was that it wouldn't answer these protests?

A. I think all the protests were concerned with—everything except the outside of the Alt-Reich, for that moment would not be answered. It wasn't about that.

Q. So far as you know, the statements of facts made by these protests were true, because you never investigated them to ascertain whether they were true or false?

A. These facts here, you mean? (Indicating document)

Q. Yes. About the shooting of priests and mistreatment of bishops?

A. I don't know exactly what has been—certainly there have been efforts made to ascertain this.

Q. But nobody ever proposed that the Fuehrer be advised that there was any untruth in the stories of atrocities which the Vatican had brought to your attention?

A. That certainly is so, because we didn't after this moment answer any notes any more.

Ribbentrop's Position on Extermination of Jews

Q. You knew that the policy advocated by the Nazi Party was to exterminate the Jews, didn't you?

A. I did not.

Q. Was that a secret from you?

A. Yes. Absolutely.

Q. Did you hear the speeches of Goering and Streicher?

A. Yes, but I may say this. I was personally convinced—I may say that—I knew it was considered a long time before entering the party. I know I discussed it with my father who didn't enter until 1933 because of the Jewish question. He was convinced, and I was also convinced, there would be an evolution in the direction of adjustment after some very evident factors of the Jewish problem in Germany would be done away with—which as a matter of fact certain important Jews told me, and I remember one telling me himself, that he did not like this development in Germany. I remember that.

Q. How could you have expected a change for the better on the Jewish question when you yourself say that Hitler was so violent on the subject that you couldn't even discuss it with him, and that he was the man everybody had to bow down to without question? What source did you expect improvement to come from?

A. You see, in 1933 and '34 I think there were probably quite a number of people living still, and even in 1935 I think, continuously some old Jewish friends in my house. I knew that quite well.

Q. I know, but you are not answering the question I am asking you, and perhaps my difficulty is that you are a man of experience in the world, and it is no good for me to assume that you knew so little as you tried to make out you knew. How could you have expected any improvement in the lot of Jews in Germany, with Adolf Hitler as head of the government in Germany, when you say that you as foreign minister could not even discuss the problem with him because he was so violent on the subject?

A. That was in 1938. In 1933 and 1935—

Q. But it was in 1938 that you became foreign minister and were a part of this outfit?

A. I can say this, in 1935—I remember one incident when suddenly it turned out that my chief adjutant was quarter Jew or half—he had Jewish blood, quarter Jew I think. I went to the Fuehrer, and the Fuehrer made him even in 1935 a member of the National Socialist Party. So the Fuehrer was not at all uncompromising in those years, and I thought he would go in that direction. He saw himself—and I can name you quite a number of Jews and half-Jews the Fuehrer saw with me occasionally in those years on foreign policy matters, for instance. Later on, of course, things became very uncompromising.

Q. You stayed with him after that became more uncompromising also.

A. Yes.

Effect of Trial Verdict on German People

Q. You have asked me to do something about preventing these trials because you say you think the German people would think that any verdict or decision as to war criminals would be directed at them. I am interested to know how the German people could think it was directed at them, as a whole, when you yourself say you disagreed with the policy but couldn't do anything about it?

A. I think this: I think that this war has been so terrible, and

I want so much my people to come to reconciliation—the German people with the other nations—especially also with the American nation.

When the War Became "Terrible" for Germany

Q. When did the war become terrible, Ribbentrop? When did this war impress you as terrible?

A. It became to me terrible—I can tell you the exact moment. From the moment of the African landing, I mean, of the English-American forces.

Q. That is just about when I thought it began to affect you that way, and up to that time, when the destruction was going on in other people's countries, this war never impressed you as being terrible, or having any terrible aspects. There is nothing that happened to Germany that Germany didn't inflict on Warsaw, and tried to inflict on London, is there?

A. I may say this, that in Warsaw, I think the Fuehrer tried five or six times to make them see he doesn't want to get the civilian population out, and everything else; and as far as London is concerned, I may tell you I was personally very much against the bombing of London because I knew the English people and knew it would affect them exactly the way it did; but, of course, I had nothing to say in it.

Q. But Ribbentrop, when you knew all of these things, you knew the bombing of London wouldn't do any good and it would do Germany harm, and you knew the attitude of the Vatican, and you knew the attitude of the United States, and in other words, on your own statements, you knew Germany was running a course that was going to bring the whole world against her, as it did, and you let the German people in for this out of what you say is loyalty to the Fuehrer. Now you say to me that the German people, if they know these facts, will think it is against them. It seems to me if the German people know these facts, they are the people who would want to deal with you, and with the other men who led them into this, and I would like to know what you think about that.

A. That may be so. That may be so for the moment, yes. But I wonder—don't you think that in the long run that Germans condemned before a court of not-Germans, would in the long run stand between the countries, no matter what it was? That is the question I am asking myself.

Q. I am not being interrogated. I don't happen to think that. It seems to me that the one thing that the German people need is to know how you fellows went on this reckless course and you never warned the German people what they were getting into. It seems to me, if I may say so, and I don't want to be unpleasant about it, but it seems to me you would have more difficulty squaring your accounts with the German people, than you would with the American people, because after all, we take care of ourselves. You are in the position of a man who, on the basis of your statements, knew that this was running amuck.

A. May I say this. I think I have said it also in that letter, and I think I must say that quite frankly I was not satisfied with quite a number of things, as I said. Now, the Fuehrer, of course, was of a different opinion, and he is dead, and it would be to me, disloyalty, and also I don't know—perhaps I have not the right and it would be presumptuous of me to judge such a big thing in history. The Fuehrer from his beginning in 1932 I know was convinced that unless he went a strong course intellectually, military, and in every way—that is to say, mentally and physically, that the German people would be the German National State, and not only the German National State, but also Europe—and he thought much further than that, and he always said would be dissolved by the Communist idea. This was his outstanding feature and he never lost it until the last. I remember during the last month he repeatedly, when I urged so much—I don't know whether you know that I have tried, during the war, four or five times very hard to come to a compromise with him to get the Fuehrer to compromise the first time after the landing in Africa, where I tried everything, and he refused, and I tried it later again and he always said "it is all *Schicksal* [interpreter explains that *Schicksal* means 'fate'], and I can't do anything." That was his creed. It is very hard for me really to judge such events, I should like to say.

Explanation of Difference Between Communism and Nazism

Q. In this fear of Communism there was nothing which prevented him from joining hands with Russia.

A. He tried that; yes.

Q. Tell us how you reconciled it with your fear of Communism?

A. That is a very strange thing. I must say I had the idea to reconcile—I had the idea always that it is possible to get National Socialism and Communism to overbridge the gulf between these two Weltauffassungen.

Q. They are not so different, are they?

A. It is something very queer. I couldn't give you a definite view about that. I was in Moscow, and I treated with Marshal

Stalin twice, for many hours; and I had then the impression that something very strong was there, and that the doctrine, the Communist doctrine, as it had also shown in Germany, was a very, very strong doctrine, because I saw how this one man had these 200,000,000 Russian people in his hands like that. From the first moment when I arrived in that room and Molotov and Stalin were there, until the very end of these two visits, which I had, I don't think anybody ever spoke a word but Stalin and he had this whole country in his hand. I came back from Moscow and reported to the Fuehrer, and I told him to my mind—I can tell you, from my side—I had also the impression it was from the Fuehrer's side, that it was the Fuehrer's thought also it would be possible to overbridge this difficulty. Later on I was rather doubtful.

Q. You mean, you thought that Communism and National Socialism could go along together?

A. I thought there was no necessity that the two countries should come to any divergencies or difficulty on account of the "Weltauffassung" [interpreter explains that this word means "*conception of life*"]. The Fuehrer, I thought, was of the same opinion, and I thought that for quite a long time, but then, of course, this pact was very unpopular with the Party, and I noticed how there were very, very strong influences I think going on in the Fuehrer himself; how he slowly sort of took an attitude towards Russia but, of course, with that as far as I am informed also, and what the Fuehrer told me himself on those occasions, the military question had a great, great part, and still more important part in it. I just want to sum up. The Fuehrer had the opinion that in the general line that this Communist doctrine was such a strong doctrine and had produced such an enormous power in the East, that he wanted to get Germany as strong as possible, as he possibly could mentally and physically, and repeatedly during the last year or two of the war he has repeatedly said again, "This is all *Schicksal*," and even went so far as to say one day that the German people must now prove whether they can stand these tremendous impacts [word "impacts" furnished by the interpreter] of the new Genghis Khan, he called Stalin, and he spoke in great admiration of Stalin always, and called him a Genghis Khan. He said, "Now the German people must prove it. If they can't stand the going it is all *Schicksal*." He absolutely focused on this one idea, and more and more on this one, so that nobody else had anything to say.

Q. Was his admiration for Stalin after he attacked Russia or before?

A. After.

Extent of Ribbentrop's Assumption of "Responsibility"

Q. Now, let us get back to the letter. You say on page 5, "if the necessity for finding responsibility can be satisfied by the voluntary assumption of such a responsibility by myself, and perhaps other co-workers of the Fuehrer, and in this manner the proposed trial of the Germans can be prevented, I stand ready to take such a step, as the former Foreign Minister of the Fuehrer, who is taking over the political responsibility of the men and women of our regime who were imprisoned here." Whom do you have in mind as perhaps to take responsibility with yourself?

A. It is a very difficult question, which I have already been asked. I have already thought about it, but I have not come really to a definite conclusion yet about it. But I should think that a number should be found.

Q. What do you have in mind taking responsibility for? What is your proposal?

A. I can't take any responsibility for criminal matters, but I thought of a political responsibility.

Q. Do you take responsibility for the war of aggression?

A. I couldn't do that for the war of aggression.

Q. Are you willing to take responsibility for waging war in violation of your treaties?

A. That is very important. May I think these questions over? They are very important questions. I have not thought about these details. What was my conception was that one could simply say, "Here. These people have declared themselves responsible for the consequences," or something like that.

Q. Are you willing to take any responsibility for the killing of American airmen?

A. No. I couldn't.

Q. Are you willing to take any responsibility for the deportations of slave labor? Of course you knew of that policy?

A. Yes. I knew. I knew. What I knew of that policy, I mean, what we did in that part was, for instance, bringing people—I mean, it was on agreements with the governments made in those countries. That was our part we took in it.

Q. You mean, with Laval?

A. With Laval, and with the Balkan countries, and with the various countries, we made agreements.

Q. Then you think there is no responsibility for that?

A. I beg your pardon?

Q. Then you think there is no responsibility for that?

A. Well, as far as we were informed, the Strength Through Joy and the German Labor Front [words "Strength Through Joy" and the "German Labor Front" furnished by the interpreter], were taking care of that, and we even put people in there to get them synchronized, and propaganda, and that they have through their own people, the French and so on; and we considered that—I don't know of any other details about this.

Q. You don't take any responsibility for the policy of deportation of slave labor?

A. Slave labor? No.

Q. And you don't take any responsibility, I suppose, for the killing, or branding, or other mistreatment of Russian prisoners of war?

A. No. I couldn't.

Q. Do you take any responsibility for the killing of hostages?

A. No. I couldn't.

Q. Do you take any responsibility for the plunder of property, such as this Rosenberg looting of cultural shrines?

A. No. That I can't.

Q. You had nothing to do with that?

A. No.

Q. And you wouldn't take any responsibility for the destruction of the Warsaw ghetto?

A. No. I can't do that.

Q. Nor for the bombing of Rotterdam?

A. No.

Q. The destruction of Lidice. You wouldn't take any responsibility for that?

A. No.

Q. And I suppose you take no responsibility for the concentration camps?

A. No. I can't.

Q. Nor for the extermination policy against Jews?

A. You mean for these criminal things? I can't.

Q. And you take no responsibility for the persecution of the churches?

A. No.

Q. How many Jews were exterminated, in your estimation?

A. I have not the slightest idea. I don't know at all. I only heard them, as I told you, the first time at Maidanek, and then after the breakdown, through the radio, before I was taken prisoner.

Q. Have you any idea whether it is a large number or a small number?

A. I don't know at all. I couldn't tell you. I have not the slightest idea.

Q. Would it surprise you to know that more than 4 and one-half million Jews were exterminated?

A. That is not possible.

Q. Why is it not possible?

A. That is not possible.

Q. What makes you say it is not possible?

A. That must have been propaganda. It is quite out of the question.

Q. If you are able to show me any reason why that is not true, I would like to know it. How many Jews were there in Germany at the time the program of extermination started?

A. I think we had in Germany altogether 400,000 Jews.

Q. How many are there left?

A. I don't know.

Q. You don't know of many, do you?

A. I can't tell you. I don't really know, I must say.

Q. Do you take any responsibility for the Gestapo, secret police, and their handling of prisoners?

A. No. I couldn't do that.

Q. What about the SS? Do you take any responsibility for what they did?

A. I don't know what you are hinting at? What you mean by that, I don't know.

Q. Their whole course of treatment of civilians in other countries, and their treatment of American prisoners?

A. Well, I—

Q. In other words, you take no responsibility for any war crimes, or crimes of any kind?

A. Crimes, I can't take. But may I say this. I mean, I assure you that the Geneva Convention—we had held that Geneva Convention up as much as we possibly could.

Q. Ribbentrop, I am sorry to disagree with you because I would rather be pleasant than disagreeable, but unless all of the proof in this case, coming from your own people, is not to be believed, the Geneva Convention was flagrantly violated. But the point is, you take no responsibility for anything that is criminal. Aside from that you are willing to take responsibility. Is that the point?

A. (No answer.)

Q. Your offer to me does not include taking any responsibility for anything that is classed as a war crime, or a crime of any character. Is that right?

A. That was my idea. No crime.

Q. So that, if we are in a position to prove crimes, your offer doesn't reach that situation at all, does it?

A. That, of course, is right. Yes. But I thought one could, perhaps find some other way to prevent these proceedings, if a number of people declared themselves responsible, and say a statement being made about it, and not holding the proceedings then.

Q. And then the world would forget all that I have called your attention to, such as these concentration camps and deportations and killing of American prisoners?

A. May I say one thing about the prisoners? You see, I may say this; that during the last weeks there were these terrible bombardments of Berlin and various other cities.

Q. Why do you refer to them as terrible bombardments?

A. Well, there were, I think, 40 to 50 thousand women and children killed.

Q. How many were killed in Warsaw?

A. I don't know exactly.

Q. If I may say so, I find it very difficult to be sympathetic with your viewpoint, because you seem to think that the bombing of Germany was a terrible thing, and I agree with you it was, but you seem to think that was when the terror of the thing began. The reprehensibility of this thing began to dawn on the American people when it started, and when President Roosevelt began protesting about this thing, but you people were utterly heedless about the sentiment of the world then.

A. But it isn't—these bombardments were disastrous. It is something unimaginable.

Q. Have you seen the pictures that your own people put out of the destruction of Warsaw?

A. No, sir.

Q. It was put out as propaganda.

A. No.

Q. I am rather afraid you are going to be surprised, if you knew so little about your own government; you are going to be surprised at some of the things that they did.

A. I can only tell you about the Geneva Convention.

Q. I think you have testified about that yesterday?

A. I mean, after these bombardments the idea came from under this terrible apprehension to do away with the Geneva Convention, of course, and I can only say this was a last—a very, very hard 10 minutes, and if everybody tried to do away with it, I could —in a very hard conversation—I could make the Fuehrer not to sign this. This was a very, very important matter, I think, which happened during the last month of the war, because it would have meant probably—you see, it was such a terrible excitement then about these women and children, that they said, "We must take some reprisals, and what can we do?" And it might have meant the shooting of many thousands of prisoners.

Q. You mean there was consideration given to shooting the remainder of the prisoners in your hands, as retaliation for the bombing?

A. There was a possibility of shooting prisoners then. Reprisal against—

Q. If you took responsibility as you propose, what was your idea of the penalty that should be imposed?

A. I have not thought about that. I don't know.

Q. What are you prepared to suggest as appropriate?

A. I would leave this entirely to the other side.

Q. I think that is all.

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 8 October 1945, 1430–1705, by Col. Howard A. Brundage, AGD. Also present: S/Sgt. William A. Weigel, Court Reporter.

German Peace Overtures

A. [In English] Then I find later on in '35—I don't know whether I ever told you—I tried to bring about a meeting between the Fuehrer and Lord Baldwin. I tried very hard. It was arranged that the Fuehrer was going to fly to Chequers. Mr. T. J. Jones can tell you about it. He was a sort of a right hand of Mr. Baldwin. I knew Mr. Baldwin and met him three or four times, and we wanted to try to get a British alliance then. May I just say this, perhaps, what it really comes to is this, the English, historically, did not want to commit themselves. They were always against the biggest power in Europe, the strongest power. I don't know whether you know that I made offers repeatedly to the British about the naval arrangement 100 to 35, then the guarantee of the Low Countries, including France. I advocated to the Fuehrer to renounce that in order to come to the British. That was in '33 or '35. Then I told him about the integrity of these territories, and the Fuehrer went further and said that he would put a number of up to twelve divisions at their disposal in case they needed to defend their empire anywhere. Most English people know it, you see.

Then I tried to bring the Fuehrer and Mr. Baldwin together at the time, but then there were these forces in England who said no. We felt very well that this meeting didn't come off. Mr. Baldwin said at the last moment, "No", he couldn't very well. Things weren't ripe yet, and so on. From that moment on, I think, one can say that England thought that Germany, this National Socialistic Germany, the National Socialistic doctrine, would be getting too strong in Europe. I don't know why the English didn't help to arrange the question of Poland. They could have had the chance to do it. Why they didn't do it was because they evidently had made up their minds, "No, we will stop now." That is more or less the way it was, as I look back very coolly, that things happened.

Q. I want to know if, as you review all these separate instances where there were pacts made with countries, followed very soon by invasion and war, if you don't find that in every instance the war was started because of some intelligence that was brought in, or some rumor, and was what you might call a defensive war, but in fact it was a mere breaking of the treaties?

A. If the Fuehrer were here, he would answer you that all these steps which he had to take were in the interests of the people out of self-preservation.

Q. Irrespective of his treaties?

A. That he would answer, yes.

Q. What is your answer?

A. The Polish question is really very simple.

Q. This is a case of what we call second-guessing now, you know. This is after the game is over and you can sit back, and it is very easy to tell what mistakes were made. All I am trying to do is to develop whether or not you consider those things to be mistakes.

A. Well, the result is, of course, disastrous; there is no doubt about that. Did I tell you about the various endeavors that were made for peace during the war?

Q. With whom?

A. Well, I tried the first time to pursuade the Fuehrer to do it. In Bromberg the night after your landing in '41—or was it '42—in Africa, I tried to persuade the Fuehrer to make a peace with Stalin at once and afterwards make a big peace offering with America. I tried again in '43.

Q. With whom?

A. I tried again to get the consent of the Fuehrer. I got it, but definitely when I got it for the first, to try to do something with Stalin, was in '44 when it was too late.

Q. What about this Hess business? Did Hess make his flight with the consent of the Fuehrer?

A. No.

Q. Did the Fuehrer know anything about it?

A. No, nothing about it, absolutely nothing.

Q. Did you?

A. No, absolutely nothing. He was rather a nice fellow, Hess, a little extraordinary; it shows in his flight to Scotland. He thought he could go there and come to an arrangement with the Duke of Hamilton, whom he didn't even know. I knew him very well, but he didn't know him at all. He thought he could drop in there in his castle and arrange a new British Government against Mr. Churchill. It was quite extraordinary.

Q. What was his mental condition at that time?

A. I don't know. I don't know. Not quite normal I don't think. I think not quite in order. He had all sorts of people around him, you know, what do you call the people—"Star lookers"?—people who prayed about health; well, queer people he had around him. Then I tried again. You probably know that. I tried again, and this is something that I did without the Fuehrer, only during the last month in '45, I sent a man to Spain to finish the thing and to get in contact with Mr. Murphy. You probably heard about it. Events went too quickly after that. It didn't come off.

Q. What was the purpose of that?

A. I wanted to try to see what perhaps could be done, if there was anything to be arranged, that could be arranged, if something should be arranged. He asked me to get in contact through Mr. Murphy with Mr. Roosevelt.

Q. Who asked?

A. I asked this man I sent to Spain. He got in contact with Mr. Murphy. I think I still have his wire that he got in contact through some high Catholic authority. I don't know exactly who it was, but a high Catholic personality. My view was to see what the other side thought, whether it would not be possible to get some understanding outside of unconditional surrender, and then if there was the possibility, I had the intention of getting three or four or five people and going to the Fuehrer, and going to him and saying, "We must make an end." That was my view then, but that was too late.

When the Fuehrer died, of course, you know that I told Doenitz that we had best change the government at once and liquidate the whole thing. I don't know whether you know this man. I don't know whether it got to Mr. Murphy or not, but I think in

Mondorf somebody told me they had news that some person of mine got in touch with him.

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 10 October 1945, 1030–1200, by Col. Howard A. Brundage, JAGD. Also present: Pvt. Clair Van Vleck, Court Reporter.

The Hitler-Chamberlain Conference at Godesberg

A. [In English] I may perhaps tell you one or two incidents which are interesting. When I was at Mondorf* here, there was one of the Englishmen who was up there. I discussed that with him. He was at Godesberg, and he asked me why I had excited the Fuehrer at Godesberg, having brought in certain papers during the Godesberg conference** between the Fuehrer and Chamberlain. I couldn't recollect for a moment. I said, "that is interesting. I think you were at Godesberg yourself."

He said, "Yes," he was there and, as a matter of fact, Sir Horace Wilson was also there, whom you just mentioned here. What happened was this: During the Godesberg conference, there came news, various news from the Sudetenland, reports which were brought in to the Fuehrer. I think one or two were put into this session here, that were important reports. I may point out these were not reports that came from the Foreign Office. They came from the Party. We had nothing to do with it at all. So I could tell this Englishman that the Foreign Office had nothing to do with the speeches, but then it struck me that a paper was brought in, I think from the military side, of the Czech mobilization, and when this paper was brought in, I remember that the Fuehrer stood up, rather abruptly and said, "Well, it is no use. If this Czech mobilization has come, there is no use talking any more." Mr. Chamberlain got up also and he said, "Well, there is no use continuing this conference and we had better interrupt it," and so on. So I got busy. I saw that the Fuehrer was on the verge of breaking up the conference. I think I said to Mr. Chamberlain, "Well, I think after all, first we should have the interpreter read out certain proposals that have been made. Let's first discuss it. Let's carry through the discussion to the end. There is no use of our losing our nerves about the Czech mobilization," and so on. I went to the Fuehrer and proposed that Schmidt read this through, because the Fuehrer was on the verge of going away. So we all sat down and after two or three hours of negotiation everything was quite in order, and we made a very good communique, a very good agreement of the Godesberg conference. I am just explaining this to you, because this Englishman asked me why I had excited the Fuehrer. So I reminded him that he was there himself, and that I had saved the situation. A few hours later the Fuehrer thanked me for having saved the situation. It only shows that the basis of the whole policy of the Fuehrer was the sentiment that all these vital German questions, the Sudeten question, also the Corridor and Danzig, that these were questions which were of no concern of England, having almost a third of the surface of the world at her disposal, that these were vital problems of Germany and that England really had no business to interfere there. I know he often said, "these English people, they always act like a governess with me." He didn't like that. That was his fundamental attitude toward the whole thing, which I think you must understand.

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*See footnote, p. 1193 of this volume.

**September 22, 1938.

The Decision to Invade Poland

Q. So that when you marched into Poland, you were asking for a war with England?

A. I think that the Fuehrer at that moment probably said, "I am going to do this." He didn't tell me that—but he must have said to himself, "I am going to take this risk, because this problem must be solved."

Q. The reason he felt that way was because it was his opinion that England was too weak to wage a successful war; is that correct?

A. I don't know about that. I don't know. We never discussed that, really. He never discussed that.

Q. You were very close to the councils at that time?

A. Yes, but he never discussed that.

Q. He had received several reports that England was strong?

A. I don't know why he definitely did it then. Of course, there was great excitement in those days, all these reports coming in and so on.

Q. Wasn't he depending on inspiration at that time?

A. I think I had told you before that there are some things, you see, in the Fuehrer, which we all never got quite behind. He told me once at a decision, that he suddenly feels, I don't know what you'd call it, a somnambulist feeling that comes over him and then he must do a certain thing in the interest of his people.

German Ultimatum to Chamberlain at Berchtesgaden

Q. Do you remember the Berchtesgaden conference with Chamberlain?*

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*September 15, 1938.

A. Yes. When Chamberlain visited the Fuehrer?

Q. Yes.

A. Yes, I remember that, but during the conference itself I have unfortunately very little recollection of that conference because I was not present. You know they were alone.

Q. Actually at the conference they were alone, but you were there?

A. I was there in the entourage of the Fuehrer at that time, yes.

Q. Do you remember that certain demands were made by Hitler on Chamberlain, and during the discussion that you stated that Great Britain would have three days in which to accept the demand?

A. That I said that?

Q. Yes.

A. Never; complete nonsense, nonsense.

Q. What did you say?

A. Complete nonsense. So far as I remember the whole—Good Heavens what are these remarks?—absolutely complete nonsense. I can tell you, not a word of truth.

Q. How many days did Chamberlain get to accede to those demands?

A. I don't even remember the demands at the moment. I know that Chamberlain came and went up with the Fuehrer, I think in his room, talked with him for a few hours, I think. I don't know whether there was a tea afterwards, whether there was a general talk afterwards, I don't know. I cannot recollect at the moment what the Fuehrer told me about this conference with Chamberlain.

Q. Do you remember that Sir Horace Wilson was there?

A. That is possible, that he was there.

Q. Do you remember talking with him?

A. That is possible, yes. If he was there, I surely did talk with him. I don't remember it now. Was he with Chamberlain?

Q. Don't you remember that both the attitude of Hitler and yourself was very firm; as you said before, you both adopted a very stern attitude with respect to those questions?

A. Yes, but I never said anything about three days.

Q. How many days? How many days was given to Chamberlain?

A. No; I don't even know—no days at all, surely not. The Fuehrer would never say to Chamberlain—Good Heavens no—say to Great Britain, three days.

Q. You may not remember details, but certainly you remember the general atmosphere of that meeting. If you don't remember it now, I wish you would think it over because every report I get on that is that both you and Hitler and, the whole conference on the part of the Germans, showed a very stern and uncompromising attitude, and you presented the demands and gave a very short period of time for Great Britain to accept them. In fact, so short, that it was impossible for Chamberlain to go back to his cabinet and get the approval of the cabinet. It was that one minor point that caused the whole thing to fall.

A. That can't be, because it was about Sudetenland.

Q. Yes.

A. But afterwards, after Berchtesgaden was the conference of Godesberg; after the Godesberg conference was the conference at Munich.* You see there were three conferences. There cannot be the question of days, because Chamberlain then came to Godesberg. They had another conference with the Fuehrer, about which I told you before, and then afterwards at Munich.

Q. That is right.

A. One thing I can tell you certainly. I'm sorry I have no recollection of what the Fuehrer told me as to what he discussed with Chamberlain, I don't remember that, because the Fuehrer generally when he did that had a talk like that, he only informed me very shortly in a very few words. He said a few things about it. He never was very lengthy in his explanation of his talks with statesmen. Sometimes only weeks or months afterwards I really knew and heard what had been going on. So I don't remember at the moment, and I have already thought it over for a few months, I don't recollect what the Fuehrer told me about this conversation with Chamberlain. The general outline I remember, that I had the feeling that the Fuehrer was right. I didn't have the feeling that Chamberlain was discontent. That I should have said to Sir Horace Wilson, that this or this should be done, while the Fuehrer was discussing with Chamberlain—I didn't know what the Fuehrer would say to Chamberlain—that is to my mind quite out of the question. I would never commit myself or do anything without knowing what the Fuehrer had said to Chamberlain. May I point out to you again, once he discussed with me before what he was going to tell the statesmen; very, very seldom, very, very seldom, perhaps once. Then he said a few words, "I am going to say this or that." But at most of these conferences the Fuehrer went into the conference—it shows you how much he had all these matters in his head and in his hands, that he did not inform me before and only in short afterwards what had been discussed.

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*September 29, 1938.

Excerpts from Testimony of Joachim von Ribbentrop, taken at Nurnberg, Germany, 17 October 1945, 1430-1540, by Col. Howard A. Brundage, JAGD. Also present: Pvt. Clair Van Vleck, Court Reporter.

The Meaning of "Weltauffassung"

Q. [In English] Do you have a definition for Weltauffassung?

A. Weltauffassung?

Q. Yes. When you say "World perception" do you mean that?

A. That is very difficult really. I always translated it as world perception, but I don't know whether that is the right translation.

Q. I have heard the term used so many times, and I cannot find anybody yet, who can tell me what it is. As a matter of fact, I have had some people tell me that that is the reason for the present disaster that has come upon Germany. Still nobody can tell me what it is.

A. Well, to be quite frank, I think that it is to a certain extent right. I couldn't tell you myself. I mean really, definitely, I have so often thought about this during these last months, how this really all came about. I don't know, I think if you ask a dozen party people to give you a definition of the word Weltauffassung, you probably would get different opinions. I mean you would get from everyone a different one. Of course, some fundamental things are quite clear: It is a question to have the National tendencies and; secondly, to have Socialistic tendencies. I mean these are the good parts of the Weltauffassung, national states.

Q. How could it be a good part of something, when you don't know what that something is?

A. What it means as a whole. I mean if you ask me for a real definition, I would not be able to give it to you.

Q. I was told that the German women don't use rouge on their lips because of Weltauffassung.

A. That is not right.

Q. Everything seems to be done in the name of that.

A. That is not quite right, because I have seen women in the Fuehrer's presence, who had rouge on, and the Fuehrer didn't mind it at all. That is not true. That is absolutely not true, but there were radical fools who went in that direction.

Q. Do you think that he knew what it was?

A. Personally, to be quite frank, I cannot give you a definite real definition of that word.

Q. Do you think of anybody who could give us a definition on it? How about Rosenberg?

A. I should ask Rosenberg, because he was always considered the Dogmatica of the Party. He may know about it, but I heard the Fuehrer say, about Rosenberg's book, that he didn't understand it.

Q. Everything was done in the name of that particular thing and yet nobody seems to know what it means.

A. I am not surprised. I told you that before.

Q. You say "world perception" and by that you mean the same as Weltauffassung; is that correct?

A. It is the translation which I always used. I don't know whether that is right or not.

Q. What is in your mind when you say world perception?

A. What is in my mind you mean?

Q. Yes; in other words, what do you mean by world perception?

A. What the Fuehrer and the party meant, and were aiming at, I could not tell you. I couldn't give you an answer, I don't know. But what sectors it comprised, of course, there is the racial question, the religious question, socialism, nationalism, and so on. I mean those are vague sectors, which are comprised, were meant by this word, but a definition, what is really meant as to these various sectors, I could not tell you. I don't know. I never have known and I never could find out.

IV. WILHELM KEITEL

Testimony of Wilhelm Keitel, taken at Nurnberg, Germany, 28 September 1945, 1530-1700, by Col. John H. Amen, IGD, OUSCC. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; Pvt. Clair A. Van Vleck, Court Reporter.

The Truth about Rommel's "Suicide"

Q. Do you appreciate the fact that you are still under oath?

A. Yes, I am conscious of the fact.

Q. Are you going to tell the truth?

A. Yes; that is self-understood.

Q. You are not going to commit perjury today?

A. Only if I don't know something, I must be able to say so.

Q. How is your recollection today? Better or worse than it was yesterday?

A. Through those many years my memory is not such as I hoped it to be. Unfortunately, I did not keep any diary and thus I have only a few recollections.

Q. Does it go back as far as October of '44?

A. I hope so.

Q. So do I. Do you know General Burgdorf?

A. Yes.

Q. What is his first name?

A. I don't know his first name. The only thing I know is that he was a successor of General Schmundt.

Q. That is right. What was his official position?

A. Chief of the Army Personnel Office.

Q. For how long a time did he hold that position?

A. Ever since the death of General Schmundt; that is, since August, 1944.

Q. Did you have many dealings with him?

A. I really had few dealings with him, but he was constantly in the headquarters and he also took over the functions of the Chief Adjutant to the Fuehrer. I saw him almost every day.

Q. At the headquarters?

A. Yes; in the headquarters.

Q. That included October '44, did it not?

A. Yes, certainly. He was in the headquarters with few interruptions since August 1944. He was in the habit of leaving for a few days, every once in a while, to go to the Main Personnel Office of the Army, which was not at the headquarters.

Q. Then he would come back again; is that right?

A. Yes; he returned then.

Q. Did you also know General Maisel?

A. Yes. General Maisel was one of the assistants in the Personnel Office of the Army. He had either a department, or a group of offices there.

Q. What was his official position?

A. I believe he was deputy to General Burgdorf.

Q. During what period of time?

A. I believe from the moment when Burgdorf became the Chief of the Personnel Office of the Army, Maisel as the senior officer present, became his deputy.

Q. Did you have occasion to see him around headquarters, frequently?

A. No, I only saw him very rarely in the headquarters because he worked constantly as a Director in the Personnel Office of the Army. As far as I know, he only was very rarely at headquarters.

Q. When did you last see General Burgdorf?

A. In Berlin, in the Reichschancellory.

Q. When?

A. That must have been either on the 22d or the 23d of April. I don't know exactly which day, but it must have been either the 22d or the 23d of April.

Q. '45?

A. Yes; 1945. That is April of this year.

Q. What has happened to him, if you know?

A. That I do not know. I never heard from him again. I don't know whether he is a prisoner of war or even if he is alive.

Q. When did you last see General Maisel?

A. It must have been either at the end of August or in September 1944. I know that for certain, I saw him there.

Q. You saw him after that too?

A. I cannot remember that. I only saw him at conferences, when I asked him to report to me in Berlin. I don't believe that I ever saw him again after September.

Q. I say you did, in case it is of any interest to you.

A. I cannot recollect that at the present time.

Q. Are you acquainted with a Captain Alldinger?

A. Possibly you could tell me with which department he was. Was he with the Personnel Office, or some adjutant, or what?

Q. Possibly I could and possibly I couldn't. In any event, I am asking you whether you knew him or not?

A. The name is not unknown to me. However, I cannot remember either his face or his functions. There was also a General Alldinger who was a general from Wurttemberg and I know him well.

Q. You know what I am leading up to, don't you?

A. No; that I don't know.

Q. You have no idea at all?

A. I don't know, for I had nothing to do with the Personnel Office of the Army. I only saw Burgdorf every day. Alldinger, I don't know. The name is not strange to me, but I don't know just what functions he had.

Q. Don't you remember a little job that was pulled off by those two generals in October of 1944? Forget about Alldinger.

A. Burgdorf and Alldinger, yes. The two generals: Burgdorf and Maisel?

Q. That is right. I say, don't you remember a little job they pulled off in October of '44?

A. I?

Q. Yes, you; a little order that you gave them by direction of the Fuehrer.

A. It may have happened, frequently, that I had told him to do something at the direction of the Fuehrer. That is General Burgdorf.

Q. But this was kind of a big deal.

A. I used to give directions to fifty or sixty or seventy different places and to officers during day and night, and I cannot remember what kind of directions I gave to Burgdorff, as the Chief of the Personnel Office.

Q. Maybe I can help you remember.

A. Yes.

Q. Do you remember a general named Rommel?

A. Yes, Field Marshal Rommel.

Q. You do remember him?

A. Yes.

Q. Do you remember what happened to him?

A. He committed suicide, General Rommel did.

Q. That is right. How do you know?

A. That is what General Burgdorf told me, because General Burgdorf was with him.

Q. That's right. So was General Maisel, wasn't he?

A. That is not known to me. Burgdorf I know, because I sent him there.

Q. That is what I thought.

A. Whether Maisel was sent along, I don't know. I didn't send him.

Q. So, if Maisel went along, he might have gone along to help Burgdorf; is that right?

A. That can be answered only by Burgdorf. I don't know whether he took anybody along.

Q. Burgdorf has already answered that.

A. You mean when he took Maisel along?

Q. Yes; the whole story. What did you say to Burgdorf before he went over there?

A. I gave him a note, personally, to take to Marshal Rommel to say that he would be tried under martial law and that he would have a trial for treason.

Q. What else?

A. I gave him this news and I said to him to draw the consequences for himself, or otherwise in the shortest time possible, he would be put before a court. There was testimony from witnesses from two different places, which said that Marshal Rommel had declared himself ready to take part in a putsch, possibly against Hitler.

Q. Did the Fuehrer tell you about that?

A. I knew it and the Fuehrer knew it because the papers about that came from the People's Court (Volksgerichtshof).

Q. Did you report it to the Fuehrer, or did the Fuehrer report it to you first?

A. That I don't know any more. All I know is that I learned about it and it is very possible that I learned it from the Fuehrer.

Q. Tell me exactly what you learned about it.

A. I know that it was concerned with a Lieutenant Colonel, whose name I have forgotten. He was an Intelligence officer in Paris for—

Q. Let's not forget his name. Let's try and remember it.

A. I never met the person, and I don't know his name, but at any rate I know that this Lieutenant Colonel does not live any more. He was condemned by the same court. I also know, though, that he was the liaison officer between the Paris office and the Berlin office. He belonged to the staff of the Military Commander in Paris. All I know is that he was a Lieutenant Colonel and his name started with "von." Maybe if I think about it long enough, and concentrate, I can remember his name.

Q. Will you try to do that?

A. I will endeavor to remember his name. I will try to find out. Unfortunately, I never knew him and never met him, but I believe that originally he was part of the air forces.

Q. Who was the Military Commander in Paris at that time?

A. At that time it was General von Stuelpnagel.

Q. This Lieutenant Colonel was on his staff?

A. Yes; he belonged to his staff and, as far as I know, he was a liaison man between Stuelpnagel in Paris and the, well, what should I call it, the putsch committee in Berlin. That was Heinrich von Stuelpnagel. I remember his first name.

Q. What did he report?

A. He testified that he had contacted Rommel and that he had informed him of the plans and that Rommel, after some thought, had said that they could count on him.

Q. What plans?

A. The plan for the elimination of Hitler and a putsch against the government.

Q. When you say he testified, what do you mean by that?

A. I mean that he said that he accomplished this task by the kind of an answer he received.

Q. I don't understand that.

A. This Lieutenant Colonel, when he was interrogated at the court (Volksgerichtshof)—

Q. What court?

A. The People's Court, said that in accordance with his task, he had accomplished the trip to Rommel, and then he testified to what kind of a result the conference with Rommel led.

Q. Which was what?

A. Rommel had him tell all about the plans and then he said that he could be counted in.

Q. Yes. What kind of a hearing was this at the People's Court?

A. That was an investigation against all those who were either suspects or accused of having participated in the planned putsch.

Q. Was it a trial or an investigation or a hearing, or what kind of a proceeding?

A. I do not know. These accused officers were transferred to the Volksgerichtshof, by the order of Hitler, for the purpose of being judged. Then what happened at the Volksgerichtshof, I don't know. As far as I know, the suspects were first arrested, and then an investigation against them was initiated. I believe I can say that most of them admitted that they were in some way involved in the preparations, and then they were transferred to the Volksgerichtshof.

Q. Who were these other officers?

A. Unfortunately, there was a great number of men. Possibly, I can find them, as I tried once to make a list of all their names.

Q. All right. You try to do that, will you?

A. According to the notes which I made from memory, about thirty officers were condemned to death. I believe it was about eight who committed suicide, and four of them were shot on the day of the putsch, right at the place where it took place.

Q. Was Rommel condemned to death?

A. No. He did not come under any court procedure whatever. At the instigation of the Fuehrer, I sent Burgdorf there with a copy of the testimony, and the order to Rommel that this was testimony against him. If it was true, he was to take the consequences. If it was not true, he would be exonerated by court procedure anyway.

Q. You didn't really believe that, did you, at the time?

A. Yes; I believed it at the time, because there was some connection there to Field Marshal Kluge and also to Field Marshal Rommel; also there was a connection between Stuelpnagel and Rommel to this liaison officer, which was later on confirmed by Rommel's Chief of Staff.

Q. Who was that?

A. I didn't know him, but I am trying to think of his name all the time. It is difficult to find the name. He was also involved in a court procedure; however, he was exonerated because he himself had nothing to do with these matters.

Q. Who else testified about Rommel besides this Lieutenant Colonel?

A. I believe there was testimony given from two places: One was by this Lieutenant Colonel, and this was the one which involved him, and that is the one that was shown to him.

Q. Who was the other one?

A. I don't know any more who that was because I didn't know all those persons. As far as I know, I only had Marshal Rommel informed of this one testimony and I had him informed that if this was true, he had to count upon being condemned by a court, possibly, the Volksgerichtshof.

Q. You received your orders from the Fuehrer?

A. Yes. I informed Rommel of the fact, and also the testimony which I had, and I believe I sent a note with Burgdorf that said if this was not true, of course, it would be all right. However, if it was true, that he, as an officer should know what consequences to take.

Q. No; I say, did you receive your instructions from the Fuehrer with respect to communicating with Rommel?

A. Yes. The Fuehrer ordered me to send somebody to Marshal Rommel and show it to him and ask him whether it was true or not, because the Fuehrer thought very much of Marshal Rommel.

Q. What else did the Fuehrer say to you?

A. He only told me to let Rommel know about this, and then I thought about it, and then I thought that Burgdorf, as the Chief of the Personnel Office of the Army, would be the best man for that.

Q. Did the Fuehrer tell you what to say to Rommel?

A. I don't know whether I remember every single word of it, but so far as I know, the Fuehrer said to me "There are only two possibilities here: One is that you have to inform him; and the other is that you have to arrest him, immediately, and initiate court-martial procedures." I think it is quite possible, that

I told the Fuehrer that it would be better to simply inform Marshal Rommel of this, as to give him a chance to state his position. I felt at that time that it would be a terrible scandal in Germany, if this well-known, and well-recognized Field Marshal, would be arrested and would be put in front of the People's Court. That was my personal opinion, that no matter how the procedure would end, it would be always against him, that he had been arraigned before the People's Court. I was also of the personal opinion, if this fact of the visit, which moreover had been confirmed by all members of his staff, was not true, that he would have taken into account all possibilities.

The only time that I did not tell the truth in this matter, is when I answered to the question of what happened to Rommel. I answered that he had a stroke. He suffered from a very badly fractured skull, which happened a few weeks before, and thus it was a very credible story.

Q. You know what actually happened to him, don't you?

A. I know that he committed suicide. When he got to know about these things, he was told to think about them and he took his own life.

Q. And you instructed Burgdorf to take the poison down with him, when he went to talk with him, didn't you?

A. Yes. I told Burgdorf to take poison along so that he could put it at his disposal, if conditions warranted it. I would have put the pistol on the table for every officer, who was accused of such an important thing as high treason. It was entirely up to him whether he would use it or not.

Q. What did Burgdorf report to you about it?

A. As far as I know, Burgdorf reported to me by telephone that Field Marshal Rommel was no longer alive, and, as far as I know, he reported to the Fuehrer also. He reported to the Fuehrer himself that he had talked to Rommel very quietly about these things, and that he had let him read the testimony—I believe that he took the original along with him—and that he gave him time to think about all these matters. Then, as far as I remember, he asked permission whether he could drive away, either in his own car or in the car of General Burgdorf.

Q. Did General Burgdorf report that he had gone off in the car with him and General Maisel?

A. He said that they had all driven away from the house after Rommel had parted with his wife, and then the car had been in front of him and suddenly the car stopped, and then it was found out that Rommel was no longer alive. He was to go to the doctor in Ulm anyway, who was to make out an affidavit about the state of his health. I believe that this came about, because before that, the Fuehrer had brought up the question whether it was possible or not to use Marshal Rommel again. At that time I had written a handwritten letter to him and asked him when he could be used again, and at that time nothing was known about all these things. He wrote then that he still suffered from very strong headaches, and that the fracture of his skull had not healed, and that he was not in a position at that time to accept employment. As far as I know, he lived in a house in the country near Ulm.

I also told General Burgdorf to try and spare his wife the terrible news that he had committed treason, that he had become a traitor. I don't know whether this actually happened, but I believe that General Burgdorf returned and talked to Mrs. Rommel himself. I want to emphasize the point, that this is the first time that I am clearing up the facts, such as they happened, without any ambiguity, because the whole matter concerned a Marshal, who was well proven, and also close to the Fuehrer.

Q. Did you also tell General Burgdorf to tell Rommel, that if he would commit suicide, that he would be given a fine funeral and monuments built in his memory, so that it would not appear that he had been guilty of any wrong-doing?

A. I did not say anything about that in the note. However, this happened; he received a state funeral in Ulm and he was buried with full honors. That was an express order by the Fuehrer and I told General Burgdorf at once that this was to be prepared. As far as I know I did not give any directions to General Burgdorf about this.

I merely limited myself to tell him if it was not true, the Field Marshal could well face any court proceedings. If it was true, as an officer, he would know what the consequences were. Anyway, in this testimony of the Lieutenant Colonel which was shown to Rommel, it contained exactly just what this Lieutenant Colonel proposed to him and what his answers had been.

Q. What you really told Burgdorf to tell Rommel was that either he would stand trial, or he would take the poison; isn't that right?

A. No; that was not the case. That if it was not true, what I told him was, he could easily face any investigation and could easily be confronted with the witnesses. If it was true, this was a question, which every officer would know how to answer for himself.

Q. That amounted to the same thing, didn't it?

A. Well, in substance this is the same thing, that is, to a certain degree. I had to decide how to present a highly-placed officer with such news, and since he was not convicted yet, it had to be done in a decent manner.

Q. It was a little more diplomatic way of putting it; is that right?

A. Well, that is the manner in which this is done among officers.

Q. Also you directed General Burgdorf to take the poison along with him; right?

A. I told General Burgdorf to take along both poison and the pistol, which he always wore. Then he went to tell Rommel that he was going to leave him alone for ten or fifteen minutes, and then he would hear what he had to tell him. I don't know whether Burgdorf gave this to him, upon his own initiative, or whether General Rommel had asked for it. Burgdorf did not tell me these details. When he returned he said that when Rommel looked at the statements, he was very startled and then later he saw the name of it and then the whole thing was clear. If I may add, I want to say something, especially since there are more people around here, that Marshal Rommel was one of the most courageous officers I have known. He had the order Pour le Merit, that he got as a young officer, in the first World War.

Q. You didn't really think that he had anything to do with the putsch, did you?

A. Unfortunately, it was not ambiguous from what we saw. His position was not ambiguous and this is the only thing that could be deduced. He told the involved, that he could tell the gentlemen in Berlin, and give them the information that when things were ready, he would be glad to be of use. So far as I know, he used the words "You can count on me." I can well imagine that the putsch people in Berlin wanted the support of a man, who had a high standing among the German people, because of his military ability.

I only want to tell the Colonel this again, that so far I have treated this as an entirely internal question, like between brothers, and whenever I was asked whether he had committed suicide, I said "No." In this way, his great reputation and his honor as a soldier was not prejudiced, and in this way he has been respected by the German people, as a soldier. Otherwise, he would have been treated like a criminal. He had a skull fracture in two places, and it was so complicated that bleeding could very well have started again, and, so far as I know, the doctor in Ulm confirmed this, that he died by a stroke.

I wish to add here that, for instance, Marshal Rundstedt who, at the order of the Fuehrer, directed the act of state, that is, the celebration and made the speech, does not know that Rommel died this way.

Q. But you have told so many false stories about it in the past. Why did you do that?

A. No, I did not. The only thing that I always answered was that Rommel died from bleeding in the brain.

Q. But you knew that wasn't true?

A. Yes; I knew that, but I meant to render him that service of comradeship which, as an officer, I had to render him.

Q. Then you must have not believed in the fact that he had been guilty of wrong-doing; correct?

A. Well, I believed that fact, but just because somebody had confessed to a crime, and then taken the consequences himself, it was not necessary to tell the whole world that he had committed suicide. It was only a natural consequence that he should have died from injuries to the brain after this complicated fracture.

I also told Jodl, whom I saw every day, and Reichsmarshal Goering, and Grand Admiral Doenitz the same thing, namely, that Rommel had finally fallen victim to this complicated skull fracture; and that I supposed that, when he was riding in his car, a sudden concussion had resulted in a stroke. This was a very plausible consequence of this complicated fracture he was suffering from.

Q. If you had really believed that Rommel was guilty of treason, you wouldn't have been so interested in protecting his memory and erecting monuments and so on, would you?

A. Because his name had become known to the whole German people, right down to the last little boy. His name was probably that of the most popular and able general that we had. Why create this disappointment for him, for the family and for the whole German people, when it was not necessary? I couldn't decide the whole, the same as I couldn't decide the act of state. Hitler decided this because he personally was close to Rommel, and thus I kept the secret of my real knowledge of those things, but if you interrogate me under oath here, I have to tell you the truth.

Q. You are doing better today that you did yesterday. I will say that for you. Did Bergdorf report to you what actually happened in the automobile?

A. No. I don't know whether he himself was in the car. He only said that the car made a short trip and then it was reported to him that Rommel was dead, or that he was no longer alive. As far as I know, the death was ascertained in Ulm.

Q. He was dead when they got to him, wasn't he?

A. Certainly he must have been dead.

Q. From where did the poison come?

A. I cannot say any more. The doctor said he was dead when they got there.

Q. I say, where did the poison come from that Burgdorf took to him?

A. That I don't know any more. So far as I know, he got it from some doctor. I didn't give it to him.

Q. Is General Speidel supposed to have given testimony against Rommel with respect to wrong-doing?

A. He was Chief of Staff to Rommel. He was not there. However, he confirmed that this man had been with Rommel once or twice. The Chief was not present at that talk with the officer from Paris. Hitler frequently gave expression to the suspicion that Speidel knew something about these things.

Q. Did you instruct Burgdorf to confront Rommel with any statements or testimony from Speidel?

A. No, certainly not from Speidel.

Q. Just the testimony of the Lieutenant Colonel; is that correct?

A. As far as I know, the testimony of this Lieutenant Colonel was written out on paper, and then there was also a note added that somebody else had made the following statements, explaining it; however, this was not Speidel.

Q. Did you direct Burgdorf to guard the house during this interview so that no escape might be made by Rommel?

A. No. That was not necessary, because this was a visit, which was announced to him, and it was said that it was necessary for him to have an affidavit from a doctor in Ulm. If that happened, that is entirely new to me.

Q. He had previously been told to come to Berlin for a conference with you, had he not?

A. Yes, I wrote that. I wrote him whether it would be possible to take some opportunity and meet me in Berlin, because I wanted to talk to him. He answered me, that this was not possible because of the state of his health. I wanted to talk to him because of possible further employment of him.

Q. There were various telephone conversations between him and you, or Burgdorf, in Berlin with regard to that subject; is that correct?

A. I had no telephone conversations with Rommel.

Q. Didn't Burgdorf have some at your direction?

A. No. I only told Burgdorf that he had to announce his visit. It was necessary for him to announce the fact that he was coming there.

Q. Generals Burgdorf and Maisel had an SS man along as driver of the car; right?

A. That is not known to me. I gave no order to involve anybody from the SS in these things.

Q. It appears that several automobiles, filled with SS men, were stationed near the house and on the exit roads of the village. How did that happen?

A. That is entirely unknown to me. That may be something that Burgdorf thought well or necessary to do, but it is unknown to me. I know nothing of it. I gave no directions whatever, that SS men were to be involved in this. The only interest I had in it was that this was done in such a way, that it drew the least possible attention.

Q. So that if the SS was in on this transaction, it was at the request of Burgdorf, is that right?

A. I must suppose that, because it couldn't have happened just like that. Burgdorf must have brought that about in some manner. If I had known about that beforehand, I would have forbidden it.

Q. Why?

A. There was no reason for that. The SS was not at all concerned with it.

Q. Can we agree that the date of this occurrence was on October 15, 1944?

A. I am sorry, Colonel, but I cannot remember the date as such. I remember the whole process and the facts, but I don't know just on what date it happened.

Q. If I told you the name of the Lieutenant Colonel, do you think that you would be able to remember it?

A. Yes; I think it quite possible.

Q. Von Hofacker?

A. Yes.

Q. Lieutenant Colonel von Hofacker.

A. It is strange, but I cannot find him among my notes.

Q. But in any event, you now recall that it was Lieutenant Colonel von Hofacker?

A. I am certain that this is the right name, von Hofacker. I never have seen him myself and, therefore, have no picture of him in my imagination.

Q. I think you stated that he was dead. How do you know that?

A. I must suppose that, because he had been the liaison man for months between Paris and Berlin. He was responsible for, in fact, an exchange of intelligence and opinions and, therefore, he must have been accused of high treason. I had no confirmation that he was condemned or executed, but I must suppose for certain that the Volksgerichtshof passed judgment on him.

Q. Looking back on this matter today, you don't really think that Rommel was guilty of treason, do you?

A. I must suppose so, because when he was confronted with the statement, and when he was told that he had said "You can count on me," I cannot imagine, from my personal knowledge of Rommel, that he would have done anything if it wasn't true. He took the consequences and that proves it.

Q. He wouldn't have had much chance if he had stood trial at that time, would he? He wouldn't have had much chance of an acquittal if he had stood trial at that time?

A. Well, that was his free decision. If he had thought that that was perjured testimony, he could have told me through Burgdorf that all this was nonsense, and that he intended to thrash it out, and he could have come up to see the Fuehrer and talk to him about it.

Q. So you infer from the fact that he didn't do that, that he was guilty; is that right?

A. Yes. Especially also from the fact that he committed suicide. Otherwise, he would never have done that, as an officer. That is, he admitted his guilt. I only can say that because that is my judgment of him.

Q. As a matter of fact, at the time when you directed the testimony to be shown to Rommel, von Hofacker had already been hanged; isn't that right?

A. That is not known to me. The judgments of the Volksgerichtshof and their executions are not known to me. So far as I have learned about them, I have noted them down.

Q. If he had already been hanged, it would have been pretty difficult for Rommel to refute the story of a dead man, wouldn't it?

A. But I didn't know myself that Hofacker was no longer alive at this time. I didn't know that.

Q. You could have found it out by merely making inquiries in the proper places, couldn't you?

A. I was not ordered to do that. The only thing I was ordered to do is to inform him of these facts and to leave him entirely free in his decision as to the consequences. I have found the numbers about the executions and suicides which resulted from this affair. There were thirty people executed in the court of the late summer and the early fall, that is, they were condemned to death. Eight of them committed suicide and four of them were shot on the spot on the evening of the 20th of July 1944, right in Berlin. There may be a difference of one or two persons here or there.

Q. Were any of them of any importance other than Rommel? I mean, were they high Army officers?

A. There was Field Marshal von Witzleben, who had already declared his intention to obey the Supreme Commander of the Armed Forces by his signature. Colonel General Hoepner, who had taken over as the Supreme Commander of the Home Army. Those were shot in the night from the 20th of July to the 21st. There was General Olbricht, Colonel Merz von Quirnheim, Colonel Stauffenberg, and Major Haeften, and the former Chief of the General Staff, General Beck, committed suicide. That was on the afternoon when I called up General Fromm and told him that the attempt had not been successful and that both the Fuehrer and I were alive. Then General Beck shot himself.

Q. Was it reported to you as to whether or not Rommel admitted his guilt after reading these papers?

A. According to my knowledge, the first thing that he said to Burgdorf was the question, "Does the Fuehrer know about this?" and then he asked for some time to think. He did not say that this was true. He merely asked if the Fuehrer knew about it, and he requested a time of ten or fifteen minutes to think. I believe that is what Burgdorf brought back to me, because I asked him what kind of an impression it made on Rommel, and Burgdorf made the remark that he had not had any doubt about it at any time, and that he was under the impression that that was so from the way Rommel had acted, and he had taken the consequences. The words which are still deep within me are his words "You can count on me in Berlin."

Q. That was supposedly said to whom?

A. That was contained in the protocol of von Hofacker. It was the answer that he received when he prepared to leave.

Q. But to whom was it supposedly said?

A. He said that to von Hofacker. Von Hofacker had the task to familiarize him with the entire plans and there was a long exchange of views, and following that, a discussion on these plans; and when he prepared to leave, Hofacker said that Rommel said "Tell the people in Berlin, that they can count on me."

Q. For how long a time had it been known to the Fuehrer, or to yourself, that Rommel was not acting, we will say, with 100 percent loyalty?

A. It was not known to me before that Rommel would be untrue in any respect. I did not believe that.

Q. Was it previously known to the Fuehrer?

A. That I don't know. He never mentioned it to me. I must say, however, that he was a little worried at that time because the entire leadership in which, however, Rommel did not have any direct part, was not quite understandable; at least, looking back I cannot say anything else.

Q. Was Rommel's view of existing conditions pessimistic?

A. Yes. When he was there the last time before his accident, he reported to me on the situation, and to me he was pessimistic; however, not to the Fuehrer. He was not pessimistic in the way that he was hopeless about the situation, but he said to me, "You must talk to the Fuehrer and must see that I get complete liberty of action." From that I deduced that he must be pessimistic in some way or another. He and General Rundstedt were at the Berghof together to make a report, and it was in the middle of the big battle after the invasion, I believe, maybe in the third week, if I remember correctly, that was the end of June. I know that the report which he personally made to the Fuehrer did not contain any pessimistic views.

Excerpts from Testimony of Wilhelm Keitel, taken at Nurnberg, Germany, 10 October 1945, 1040-1305, by Mr. Thomas J. Dodd, OUSCC. Also present: 1st Lt. Joachim Stenzel, Interpreter; S/Sgt. Horace M. Levy, Reporter.

Hitlers Reaction to Hess's Flight to England

Q. Do you know that Hess appears to have lost his memory? I wondered if you had ever observed any signs in him before he left to go to England?

A. Well, the last period, and the flight to England, I know only from the description given by Hitler. I remember distinctly at the Berghof, we were at Berchtesgaden, Hitler was walking back and forth with me in his big study, and we talked, and he was touching his forehead and he said "Hess must have had a mental derangement. He must have had some sort of mental disturbance, and that I can see also in the letter that he wrote to me." Hitler also said, "Well, the letter that he has written, in it I can't recognize Hess. It is a different person. Something must have happened to him." You see, it was a letter that Hess had dispatched by means of a courier, but it was delivered only after Hess had arrived in England. Hess, who had a very fine sensibility, said that "a war with England is bound to be disastrous, and I believe certain knowledge I have of the English way of thinking"—after all, he was born in Cairo—"and therefore, I think that possibly something could be done." But naturally, from the attitude of Hitler, I merely can say that Hitler thought that that to him seemed insane. I remember in the morning after this news reached us, he ordered all the Gauleiters and Goering to meet for the purpose of communication to them and discussing with them the repercussions of this fact.

Q. Was it published? Was the fact that he had gone made known publicly in the press?

A. Well, I was just going to come to that. I remember that after I had talked with him, he said, "Well, I have to talk to Goering right away." Goering was at his house in Berchtesgaden, and also the chief of the press, and I think also the Foreign Minister; and he said, "Well, we have to talk it over with these people and figure out how we are going to publish this, how we are going to present this." And naturally, during the first days of it, there had been received no confirmation of the fact that he had landed in England, that is, he might have dropped into the sea. Naturally, in the beginning, the question was, first, "We don't even know that he arrived." In the letter he says "I am going to England. I am going to try to use my relationship to British leaders to bring about some sort of an agreement." That is just about what it must have said in the letter. But Hitler said, "Did he ever get there? Did he have enough gasoline to make the trip, to bridge the gap between the continent and England? Goering, how is this business? Can he do it with this type of plane?" And all these considerations must have been dominant during the first and second day. They rendered the presentation of the matter to the press very difficult; and the admirable thing about it was that Hess was entirely alone in that plane, and that obviously he must have placed a considerable number of reserve cans in that plane in order to refuel. Otherwise, it wouldn't have been possible; and that he must have had means of orienting himself, that is by maps or a compass in order to maintain his course.

Q. From where did he take off?

A. From Augsburg, from the airdrome of the Messerschmidt works he took off, and he flew across the channel to England, and flew all the way into Scotland.

Q. How was he ever able to make those arrangements without something being known about it, and some discovery being made that he was preparing to leave?

A. Well, I remember that was the question that occupied Hitler immediately, too, and I remember, I was pretty sure that right away Hitler ordered that Professor Messerschmitt was to be locked up. On the other hand, Hess had free access to all plane factories, and experimental airdromes and training airdromes; and he was an old flyer himself, and I know that he was absolutely free to come and go as he pleased. It could not be proved of Messerschmitt that he had even the slightest inkling or knowledge of the plans. That was definitely established, and his wife, that is Mrs. Hess, didn't know either. He was a great champion —Hitler told me that, too—of the idea that one should mine ports by means of planes. I remember that he always insisted that at the beginning of the war, all the ports of England should be mined by planes, dropping mines into the ports. I remember Hitler used to say, "Well, Hess says it should be done with planes, and I always am in favor of dilettantes, for the specialists always come and say, 'It can't be done!' They always have reservations, while I am in favor of dilettantes, and Hess has ideas." And I remember Hitler's always telling himself that he had conversed with Hess on that, and that they had both agreed that planes were supposed to be used for mines.

Hitler's Return to Berlin in April 1945

Q. I wanted to ask you about the last days in Berlin when you last saw Hitler, and what the situation was there in Berlin?

A. Well, I would like to begin perhaps with the 20th of April, which was the birthday of Adolf Hitler. At that time he was quiet, and gave the impression of being rested, clear, not nervous, and rather balanced.

Q. Had he been nervous, disturbed, and restless prior to that time?

A. Well, it wasn't so much that, but during the last period in Rastenburg, he wasn't well at all. He had some stomach and intestinal trouble, and was under medical attention all the time. Then, furthermore, through the bursting of the eardrums, he had some sort of suppuration, and also some trouble with his vocal chords. His voice used to be quite loud, energetic, and passionate and at that time it was rather weakened and faint. And at times he used to spend two or three days in bed, but all the same, every day he did receive the situation reports, and for that he would always rise. He was rather fussy. That is, he didn't want to have anybody in his room when he wasn't completely dressed. Then he usually called me in first and said, "Well, be sure that the gentlemen won't keep me for more than half an hour, because it is too much of a strain on my voice." I think that I can actually consider myself responsible for having gotten him out of Rastenburg.* That was about the beginning of December. I always believed that that actually would be done by the doctors, Professor Morell and the others, but they didn't have any influence with him. I got him to realize that in this bunker, in this cellar, he couldn't possibly have this operation. After all, it was not a very big operation, but it was supposed to be performed by this Professor—I can't remember the name now, but I remember him very well. He operated on me too. I said to Hitler, "This Professor has a terrifically large clientele, and he would have to travel all night to get here, and then operate on you in the morning, and lose a lot of time." He looked at me and said, "You are right, I will go." Because until then he insisted that he would always stay in East Prussia, and then always said, "I am staying in Rastenburg, because if I leave East Prussia, then East Prussia will fall. As long as I am here, then it will be held." On the other hand, he also said, "Well, really, I must speak one of these days. I must address the German people, and I must find an occasion for that. Let's say, Christmas or so, and in order to do that I must restore my voice. I must get it straightened out." So we did travel to Berlin and there we prepared the Rundstedt offensive, which was then in the drafting stage. Then that little operation was performed, and during the days right after the operation he wrote everything down. That is, he would write little notes, for the most part, to Jodl or to myself, and we would answer him; and within a period of about a week or eight days, his voice was absolutely restored. And his stomach and intestinal troubles at that time had also disappeared. Then the situation report discussion took place in the normal quite large circle, and then towards evening, when all the other gentlemen had gone, he was talking with Goering and myself, and he said, "Well, the Reichsmarshal just suggested that he go to Berchtesgaden, and I don't have any objection to that." But I merely observed that naturally with the Reichsmarshal, it had to be discussed in great detail where the car could still pass in order to get through to Berchtesgaden. Then the Reichsmarshal continued to stay with him, and I left. It was normally about seven o'clock, and that was really the last moment we had to get under shelter, because that was the time the big attacks began, the big bombing raids.

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*Hitler's military headquarters in East Prussia.

Hitler's Last Days in Berlin

The next day of this observation was the 22d of April. That day he was very restless. That was quite in contrast to his normal way, when he was very determined and gay, and gave very orderly instructions. He summoned one of the adjutants, and he told him that Minister Goebbels should come right away; and a little later, maybe a half hour later, another order that Mrs. Goebbels and the children should come too; and when it was reported that Minister Goebbels was there, he went out, he left the gathering, and after ten minutes he came back again, and the situation report discussion continued in the normal course after that. Goering had already gone to Berchtesgaden, and Doenitz was not present that day. And when the situation report was finished, he called me back and also Bormann. He simply said, "I will never leave Berlin, never." Well everything had already been prepared in Berchtesgaden, and a considerable number of the Staff personnel had already been sent there. After, I must say, very, very hard difficulties or fights, he finally had consented—it must have been about the middle of April—to the forming of two separate staffs, one for the North and one for the South, for the eventuality or possibility that Berlin might become separated from the southern part of the Reich; and he had appointed Doenitz for the northern area for the coastal area; he was supposed to have a very small section of the Leadership Staff, and of the General Staff, and liaison officers of the Air Staff; and he was supposed to be in charge of the northern section. At that time, there were still German groups in the corner of East Prussia, in the area around Danzig, in the entire area northwest of Stettin; and then naturally, there was still the area around Hanover and Hamburg, which was sort of closed in, and naturally for all this, there was the sea lanes connection, that was the possibility of evacuation by sea from the northern part of Latvia and East Prussia, and even perhaps withdrawal of troops from Stettin to Schleswig-Holstein; and for this entire task, Doenitz was designated with a small staff, fitted for these functions. On the 20th of April, Doenitz was given this command. I remember standing with him on a little hill, overlooking his home at Dahlem, and from there we observed the great aerial attack on Berlin that was taking place on the morning of the 20th of

April. And that evening, Doenitz took formal leave to take over the command position in the area around Hamburg; and from the Supreme Command of the Armed Forces, OKW, there had already been selected the various specialists for the field in the north, and also for the southern half; and this order on the two separate areas, the north and the south, I remember that we had to change it several times. Jodl had to change it in such a way—because he didn't want the designation "North" and "South," but he wanted it designated as "A" and "B." Well, then I first presented this matter to him for his signature, he said, "I'll never sign it. I'll never sign it. Away with it."

Q. This was Hitler, you mean?

A. Yes. Well, for the southern section, we had selected the better talent; and for instance, from the Leadership Staff, we had already sent down the assistant of Jodl, General Winter. He had already gone down to Berchtesgaden. So that at the very time that we were still in Berlin, we already had the staff of Doenitz in the north and the staff for the southern area, and everything had been prepared for travel by plane. That is, we were supposed to go by plane to the south, and then very suddenly on the 22d, came this new decision to us, where he said, "No, I will never leave Berlin." Well, naturally, I was absolutely astonished. I was perplexed, and I said, "Well, if we don't do it now or within a very few days, we must fly, we must fly to Berchtesgaden." And then he said—I think he left the room. I don't know exactly. I think he left the room and called for some representative of the Press Division, and wanted to know whether his statement, that he was never going to leave Berlin, had already gone on the streets. Then I asked for some information as to what sort of publication that was; and I was told that during the situation report, a news announcement had been made over the radio, in which it said the Fuehrer was in Berlin; that the Fuehrer would stay in Berlin; that he would never leave Berlin; that the Fuehrer would defend Berlin to the very last. Then he said, "You are ordered by me to leave tomorrow for Berchtesgaden" (pointing to the interrogator).

Q. Pointing to you that way?

A. Yes, pointing at me with his finger, he said, "You go to Berchtesgaden tomorrow." Then I asked, "Well, when are you going to Berchtesgaden? When are you coming to Berchtesgaden?" He said, "I will remain in Berlin." I said, "Well, then, I shan't go to Berchtesgaden either." He said, "You will follow my orders. Where is General Jodl?" Then General Jodl was called in, and Bormann was sent out. He then repeated this order and said, "You will accompany Field Marshal Keitel to Berchtesgaden, and from there this thing will be directed." Then Jodl said, "Well, you can't direct anything from here; if you don't have your Leadership Staff with you how can you lead anything?" Well then, he made some sort of remark, he said, "Well then, Goering will take over the leadership down there. He is down there and he will do it." Then I left the room, because I wanted to find out what actually was going on, and when I left, this order was sent to me in a verbatim form, this order that had also been passed on to the Berlin radio. Then he sent everybody out, and I tried to talk to him alone, and I told him, "If you have made the statement once that you will fight before Berlin, in Berlin, and behind Berlin, then that is the way you will have to do it; but it is simply impossible that, after all this time that you have been directing and leading us, all of a sudden you should send your staff away and let them lead themselves." Then I told him, "The Western Front, the Balkan Front, the Eastern Front, and the Italian Front, they make up three-fourths of the armed forces" (indicating on map, and pointing to the southern area); for just to the south of Magdeburg, near Halle, there had been this pincer movement to cut Germany in half. Then I told him also, that first of all down there were the large portions of the forces, and that after all, from down there the arrangements or the peace offers and the dispositions had to be made as to the conduct of our activities, and then he merely said, "I have taken a position. I have taken a fixed position, and I can't leave it." I think he also said something along the lines, "Furthermore, Goering is much better at those things. He can deal much better with the other side." Then he cut off this particular topic and said "What's the situation with the Army Wenck?" That was the army that was supposed to be drawn from the west and put to attack on the southern side. It was supposed to be placed in the area of Jueterbog and reestablish a connection with the 9th Army which was fighting south against the Russians. The Army Wenck was an army which he had kind of made up himself. He, himself, had selected all the different divisions, the armored divisions, and so forth, and it represented sort of a reserve that he had selected himself during the last few weeks. And when Jodl—whose eyes I know quite well— and I were standing there and looking at him in this particular situation, we just told ourselves silently, that there was nothing we could do about him. Then I told him "Well, General Jodl remains with you here in Berlin"—or rather at that time we were not in Berlin but we were in a small suburb called Krampnitz, between Berlin and Potsdam—"and I shall go immediately to the Commander of the Army Wenck, and I shall give them all the new instructions that you have given regarding the deployment of the army south of Berlin, to make the junctions with the 9th Army, and tomorrow morning I shall report to you on the conditions of the army." Then he didn't say anymore regarding my going to Berchtesgaden, but merely said, "All right, I agree to that, but now you had better come along with me and go to my place, for you have to eat something;" and I said, "No, I want to leave right from here. I don't want to bother going into Krampnitz first. I want to leave right way." It was eight o'clock then. Well then, he had something brought for me to eat, and he sat with me and was quiet. I mean, he was perfectly quiet, not nervous, and he took personal care of the fact that there were sandwiches prepared for me, half a bottle of cognac, and chocolate, and things like that. But then in spite of that, I still drove about half way to Krampnitz with Jodl, in order to discuss once more with him other matters, and kind of clear up between ourselves what new situation had arisen, and we both realized that through this publication an entirely new situation had arisen; but when I took leave of Jodl, I said, "Anyway, I am leaving now for the Army Wenck, and I will get there as soon as I can, and will return tomorrow morning early. Let's both go together to the Reich Chancellory." Then Jodl said, "There is no doubt about it. It is an entirely new situation. I will study it now the whole night long, for now it's just the fight for Berlin." And I remember still saying to Jodl, "Well, you know, I have only one thing to say to Wenck, and that is, it is now the fight for Berlin, and the fate of the Fuehrer is at stake." Then I drove in the general direction of Brandenburg. Well, I passed Brandenburg, and from there I went to the General Staff Headquarters of the Army Wenck, and when I arrived at Wenck's Headquarters, I told Wenck about the situation. I didn't tell him anything about the events in the Reich Chancellory, but I merely explained to him that that was the great task—that this was actually the first time that I took an active part in the direction of the war. Then I said to Wenck, "I am going to remain here. I want you to issue an order, and I want to take that order with me." Then I took this order, and went with it to the various divisions, and talked personally with all the different commanding generals of divisions, and with the two commanding generals who belonged also to the army, and went ahead to the front and talked to the regimental commanders, and told these people what was at stake, and

I had a very good impression of the commanders and of the troops. Then at noon, at about 12 or 1 or 2 o'clock, I was back in Krampnitz, and then I discussed everything with Jodl again; and he issued further instructions for certain necessary measures, and Jodl announced our coming at the Reich Chancellory, that is, he told them we were on our way; and then about two or three o'clock—I don't know—we did drive to the Reich Chancellory, and at that time already the long range artillery was actually covering the center of Berlin. That is, single shots. I mean, it was no barrage, just stray shooting; and then I reported on my night visits to the various people, told them what I had done all night, and finally gave him the order of Wenck.

Q. That is, to Hitler?

A. Yes, and then again, just as normally, the general situation was discussed. The entire general situation on the various fronts of the war was discussed, and he appeared very quiet and rested and sort of satisfied, if one could say so, in that situation; he had a satisfied expression. And I remember saying to Jodl after we came back, "Look, we kind of got him quieted down. Yesterday was a very exciting day, but today we got him quieted down pretty well." And I told Jodl, "I will sleep for a couple of hours, and then I will immediately go out again." Jodl remained at Krampnitz, and then I went to the Headquarters of Wenck again; and then afterwards to the command posts, north of Berlin, that is, to the different commands that were in the northern section; and I merely said to Hitler, "I am driving out to the front again, and I will report to you again tomorrow." He then said, "Well I guess you can't possibly do it all in one day. Perhaps the next day then, that is, perhaps the day after tomorrow, you can go and see the Northern Army Group"—that is, the one under General Heinrici. Then in the evening—well, I wasn't there then—the reports arrived that the situation at Krampnitz was getting very dangerous, because there were reports that Russian forces were going around Berlin in the North, fairly close to Berlin, and were threatening the big highway, from Magdeburg, by way of Nauen, and Brandenburg to Berlin. For at that time, we had already placed the commands north of Berlin, under the general supervision of Wenck, so that Wenck with his northern wing was actually resting on the Army Group of Heinrici in the northwest of Berlin; and on the morning of the 24th, when I came back from the visit to the various divisional and regimental commands, upon my return to Wenck, I was told that Jodl had left Krampnitz, and he had taken up headquarters in a camp in the woods, north of Krampnitz (that was in the woods near Fuerstenberg); and that Jodl had arranged by telephone with Hitler. And any command of going to Berchtesgaden wasn't even brought up. And on the 24th around noon, I arrived at the new headquarters (at this camp in the woods where Jodl was) and I ordered an airplane from the airdrome in Rechlin, an order to get to Berlin in the late afternoon or evening; and this plane ride could not be made, because there was a very thick fog over Berlin, and one couldn't get to any of the airports, and not even to the Heeresstrasse, where a runway had been fixed on a wide street; so that my flight of the 24th was rendered impossible. Then I wanted to fly on the 25th. Well, on the 25th, there was a telephone call from Berlin, for we had communications with the Reich Chancellory, there was a telephonic order that some battalion was supposed to be flown into Berlin and some ammunition. I remember talking to Hitler on the telephone then, and he said, "Well, first the ammunition and the troops must be flown in, and then you can fly in." Then I got news from the Adjutant at the Reich Chancellory (that is von Below) and I was informed that I could not land on that big street in front of the Brandenburg Tor, because there had been several hits and the runway was damaged. By the way, all the time there was telephone conversation with General Krebs, the second man under Guderian. That is, he was the Chief of Staff, and he was right there in the Reich Chancellory, and in fact, all the orders and all the measures had only one purpose, and that was the relief of Berlin. And I considered it my task, from then on, to make it clear to the troops and make it clear to the commanders what that task was, that is, what was at stake; and the channel of command then ran from the Fuehrer through Krebs to Jodl, and there were two different lines of attack; there was the Army Wenck in the southeast of Berlin; and then there was the attack of the armored units in the area around Hamburg.

Well, then the next day, I wanted to fly to Berlin at night, because during the day one could not fly anymore, and that was forbidden me by the Fuehrer, and he said, "I will send you General von Greim"—he was a general of the air force, and he was supposed to be the Supreme Commander of the air forces. "You wait until General Greim comes to see you, and then we will talk about it further." General Greim had already received a shot through his leg at the time of his landing in Berlin; and Greim actually did leave, and he did reach us, but at that time we had already left our headquarters at Fuerstenberg, and had proceeded in a general direction towards Mecklenburg. There a new situation had arisen from the fact that General Heinrici had withdrawn his right wing from the East; and we slipped away from the Russians with maybe a half an hour's respite. Jodl had already urged me several times, that we were supposed to get out of there, but I didn't want to leave as long as there was a connection with the Reich Chancellory; and this connection existed, first of all, by telephone, and then when the wires didn't work anymore, through the transmitter; there was still a connection by voice, that is, radio telephone. When this radio telephone didn't function anymore from the transmitting tower, I don't know for what reasons, we let a balloon fly. We sent a balloon up in the air, and talked by radio telephone from the balloon to Berlin, and it was still a perfectly good radio telephonic connection, that is, one could speak. Then naturally, one could use Morse. Then on the 28th, about noon, the Russians shot the balloon down with a plane; and from then on there was no more voice connection, and Jodl at that time was just talking with the Supreme Commander in Berlin; it was a commanding general; and from then on, the connection with the Reich Chancellory had been separated; and then we had to leave, and as I said, we just barely succeeded in getting away. That evening, I did meet General Greim, who had his leg bandaged; he was shot through the leg. He gave me the news that Hitler and Goering had a severe quarrel, and that they didn't agree anymore; and that he, Greim, had been nominated the Supreme Commander, and that he was going to fly down to Berchtesgaden the next day in order to take over the air force. Then he actually did fly to Southern Germany, and I learned that he died of an inflammation in the wound that he had received. So then I and Jodl got into contact with Doenitz, who was in the general area of Kiel. After the 23d, I did not see Hitler anymore. Well, as I say, I didn't talk to him. I mean, I didn't see him anymore on the 23d. On the 28th, in the headquarters at Waaren (for as I told you, the first movement was from Krampnitz to Fuerstenberg, the camp in the woods, where we were on a big farm)–well, at Waaren I received a telegram from Hitler. That was a telegram, not a radio telephone conversation.

Q. Do you remember what that telegram said?

A. Yes, I still remember quite well what was in there. It said, "I expect the relief of Berlin. What is Heinrici's army group doing? Where is Wenck? What is happening to the 9th Army?" The 9th Army was withdrawing from the Eastern front, south of Berlin, and I think there was also a fourth question—Let's see —Wenck, Heinrici, 9th Army, and—Oh, yes, "When comes the connection between Wenck and the 9th Army?" And then the last question was "Well, what is the situation on this armored attack from the north of Berlin?" (that is, going south towards Krampnitz and Potsdam). Then, well, Jodl and I prepared a telegram, that is, Jodl gave me a telegram which we prepared during the night, and which naturally was rather unsatisfactory, and it ran about like this: "Of the 9th Army, we don't know anything, that is, we have no connection with the 9th Army. Wenck advancing very well with his northern wing south of Potsdam." (His units had already reached the extremities of the lakes south of Potsdam.) "Armored attack in the direction of Krampnitz not successful." That is, it had not succeeded because the forces had to be sent in the direction of Heinrici, in order to support his southern wing. "Southern wing of Heinrici in process of yielding towards the West." If I remember there was still one sentence which I added myself, and that was that "I, with the gentlemen of your Leadership Staff, am on the road day and night in order to explain to the troops and to the commanders what their tasks are and what is at stake" (Illustrating on map). And, then the staff withdrew even further, for that naturally had been just an interim Headquarters overnight. We withdrew into the area southwest of Luebeck; and there I was called to Doenitz, and Doenitz showed me the telegram that he was the successor of the Fuehrer; and there followed that afternoon when I was with Doenitz—together with Field Marshal Busch, who was the commander in the Hamburg area (it might have been the next day, the 30th perhaps)—that the telegram arrived, saying that the Fuehrer was deceased.

Q. Who sent that telegram, do you know?

A. I think that came from Goebbels, but naturally I don't know that particular thing, because at that time Doenitz simply said it to us that way, and he received the telegram. I only remember receiving a telegram myself, the day before, where it said that one of the adjutants was on the way with new orders from the Fuehrer.

Q. Was that a telegram from Hitler to you?

A. That was from Hitler. That must have been on the 29th. I believe that was on the 29th, and what orders they represented it didn't state. Doenitz had received the same sort of telegram, and I don't have any doubt that that established that in the case that he should die or be killed or should he fall in battle, because that naturally wasn't stated, Doenitz was to be his successor, but the document itself I never did receive.

Q. You mean, the orders?

A. This, this order, "I appoint Admiral Doenitz my successor."

Q. That is the order that you never received?

A. Yes, these documents I have never seen. They must have been sent also to the prominent personalities involved, certainly to Admiral Doenitz and to myself, determining his successor. Well, this officer had never shown up, this adjutant, he never showed himself anyway. Yet, for the 27th, about fifty planes had been ordered to the vicinity of Berlin, and I had the impression that they were supposed to be used for the transporting of personnel from Berlin, but I repeat, the adjutant never showed up. That such an order, executed by Hitler existed, is confirmed in a statement by Doenitz where he says, "I received a telegram," or something to that effect. But about those things, Doenitz is better informed, because all these matters I merely learned when I was maybe an hour or maybe half an hour with Doenitz. At any rate, on the 30th of April in the evening, we knew that Hitler was not living anymore. Doenitz, that very night, discussed with me and with Jodl the offers for an immediate armistice, and I think that must have been on the first—no, on the second of May—that Admiral Friedeburg flew to Marshal Montgomery and afterwards to Eisenhower; and our principal idea was which troops could be saved, that is, could be put into the American and English sector of military activities.

Q. And then the final arrangements were made in a few days.

A. That is, as soon as Hitler was dead, more or less the principal point was this: If somebody else has the responsibility, then the only thing to do was to seek an immediate armistice and attempt to save whatever can be saved. But naturally, up until his death, I considered it my greatest task, and so did the others, to battle to get him out of Berlin, that is, to relieve Berlin, so that he could get out.

Q. Do you think he would have lived if you had been able to relieve the city?

A. Well, it is possible, that is, if the Wenck Army had succeeded in reaching Krampnitz and brought about a link between Berlin and the West, and if the armored attack had succeeded, then it is possible that he would have realized that his original statement, that is, "That I am remaining in Berlin; that I shall defend Berlin to the last," would have been interpreted in such a way that now that Berlin was linked to the rest of the territory to be defended, that he would have withdrawn with us, but nobody could look into the inside of his soul. I only can make these deductions, because I remember him always saying, that "I, alone, take all responsibility, and I shall bear this responsibility to the very end."

Excerpts from Testimony of Wilhelm Keitel, taken at Nurnberg, Germany, 10 October 1945, 1505-1655, by Mr. Thomas J. Dodd. Also present: 1st Lt. Joachim Stenzel, Interpreter; S/Sgt. Horace M. Levy, Reporter.

Keitel's Analysis of Hitler's Character and Traits

A. And now, I would like to report, since it seems to interest you, on the general atmosphere, and what I have observed as some very salient characteristics in the personality of Hitler.

Q. I would like you to do so.

A. The first was that attachment, which to us was almost not understandable, to the so-called "Alte Kempfer," this is, to the old fighters of the Party. He found no way of separating himself from them, even after they had grown to be inadequate and had become responsible for actions that were in no way in order, and could in no way be corrected. There was together with us at Mondorf,* and I think also here, one of the former Gauleiters, whom he has never dropped, or, that is, whom he may have relieved of his office but, whom he never denied.

Q. Streicher?

A. Yes, and of this kind there is really quite a long list. That was, as I said, an attachment that was almost not understandable, and certainly unlimited, which did not end even when the object of his affections had brought himself in conflict with even criminal law. Inversely, if some one of the generals, or of the military gentlemen had come into some sort of objection to him, then there seemed to be no difficulty at all to sever relations. But even then, he usually chose an occasion when something had gone wrong to justify the removal. At such an occasion, as we called it, somebody simply had to be sent into the desert, that is, on the occasion of some bad strategic action or some mistake. There was no possibility of compromise. Somebody had to bear the brunt. For example, he twice separated himself from Field Marshal von Rundstedt. The first time in the East, when the first crisis took place near Rostov, he, in that case, was the one that had to put his neck on the block. But then, that situation was straightened out comparatively quickly, that is, the fall was caught, as it were, and Rundstedt was again reinstated in the west. Then, when the landing and the invasion had been made, I recall his saying, "Well, he is an old man. He has lost his nerve. He just isn't up to the situation. He must go." On the other hand, since he liked him and didn't want to hurt his feelings, he presented the matter in such a way that he sent him a very nice personal letter in which he said he had the impression that possibly his nerves were not quite up to par, and he had the impression that it would be a good idea for him to take a vacation. Then after two months, he said, "I'd rather like to see and have a word with Field Marshal von Rundstedt, and check on whether he had regained his health." And then Field Marshal von Rundstedt spent three days at Rastenburg, and he asked me "What am I supposed to do here? What is the story?" And I said "Just wait awhile, and he will finally tell you whether you are supposed to leave again; you'll just have to sit tight." Then I approached Hitler and said, "Do you have any intentions with Rundstedt?" He said, "I will tell you tomorrow." And the next day he said, "Today I don't have any time for that." Then the third day he said "Come in the afternoon, at such and such a time, with Field Marshal von Rundstedt," and then, after an hour's talk, in which only general things were discussed, all of a sudden he said, "Field Marshal, I would like to place the Western Front in your hands again." Then Rundstedt merely said, "Whatever you order, I shall do to my last breath." Then after he had gone, Hitler said, "You know, the respect that Rundstedt enjoys with the other services, that is, not only with the Army, but with the Navy and Air Force and with everybody, that is absolutely unique. He can push anything through, and I don't have anybody else that enjoys that sort of respect, who can push everybody else before him." But when the offense of the Ardennes had failed, then naturally, he turned around again and said, "He is too old. He doesn't have the grip. He can't actually influence the generals enough that they will follow him all the way. He doesn't control them right, and I guess I will have to separate myself from him again." He also said, "I simply can't demand from a man of his age that he should travel around from one command post along the front to another, day in and day out. We just have to have a younger, a more active person in his place." Then I replied, "You have Model for that. Put Model in his place. He has the entire front from Lake Constance to the border, and he is traveling all along this front." To that I received no reply. The name, Model, during the entire period of the offensive in December and January, December '44, and January '45, was practically never mentioned. I simply can't help having the impression that for this unsuccessful offensive, somebody had to go, because before the eyes of history, he wanted to plant the responsibility directly with somebody, and while he was perfectly willing to take the overall responsibility, he also wanted to have on the record some rectification of this situation. And to me, he always said, "I like von Rundstedt very much. He is a wonderful man, and I like him extremely, but as Chief of Staff, he is no good; he is absolutely no good." So von Rundstedt had to come to Berlin to meet Hitler, and I must say that Hitler was extremely friendly in his treatment of Rundstedt. He gave him a further decoration, that is, the Swords to the Oak Cluster of the Knight's Cross; and he also said, "Well, do something for your health as fast as you can. I want you to get well. I need you again, because I know that I can't do without you." And I remember when he left, Hitler said to me, "I wish that this man were 10 years younger, because then I would have made him Supreme Commander of the Army, and then we would really have something." And he also added, "I know perfectly well that Rundstedt is a general of the old Prussian royalist tradition, but he is an awfully good general; and he is not a National Socialist, and he is not a Party man, and he doesn't want to have anything to do with us. I know that perfectly well. But, Keitel, history must know this, and I want to say this right here, history will know that that thing will never have prevented me from selecting the best man for such a purpose. I don't appoint a Gauleiter to the post of a commanding general, but inversely, I don't want to have a general become a Gauleiter." The thought, naturally, was that the one man is a politician, and soldiers do not understand anything about politics; and what a general has learned from a military point of view, no Gauleiter or anybody else could learn. That would be the first quality that I would like to point out, and as we always called it, the "Faith of the Nibelungs."

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*See footnote, p. 1193 of this volume.

The next characteristic was his very high sensitivity, and he was particularly sensitive to the idea that the generals do not recognize you fully.

Q. Didn't recognize him fully?

A. Hitler, speaking to himself, says "The generals do not recognize you fully."

Q. I see.

A. Naturally, he never pronounced it that way. He never expressed it, but to put it, let us say, quite bluntly, he said to himself, "The generals consider me merely like the corporal of the last World War, and all of the things that I am telling them, they question and they say 'Well, how am I supposed to know all this?' " That, as I say, was never expressed, but I, as a silent observer, always had the impression that this particular sentiment was extremely deep set within him, and unfortunately that feeling was felt not only by me, but it was also felt by others in his surroundings; and in fact, a lot of people, in order to get him angry with somebody, would insinuate that this particular person might have expressed a sentiment of that sort, just because they wanted to get him excited. That is, one knew perfectly well that in order to render a general absolutely impossible before the eyes of Hitler, one merely had to say that this general had been overheard as saying, "This is a ridiculous thing. That is impossible," and then the man was finished. Even today, I have not been able to learn what actually was brought against Field Marshal List. There must have been some sinister forces at work that deprived Hitler of the slightest confidence that he might have had in List. I was sent by Hitler to tell List that he was supposed to resign his command of the army group down below, in the Caucasus. As far as the leadership, the military leadership of List is concerned, according to Jodl and myself, there weren't any reports that could be made. But when the attack of that army group from the Caucasus to the Black Sea—to the place, what is the name, I forget—failed, when that failed everything was over. It was finished. Hitler said, "I can't do anything with a Field Marshal that comes to me with a map on which one can't see any progress." And yet, on the other hand, it was forbidden to fly with a map on which any sort of troop movement had been marked, because in coming, especially from the Caucasus to the north, one was flying over a considerable portion of Russian territory. There were some dark forces, some indefinably sinister forces, some intelligence—it might have been from Himmler, I don't know—but it succeeded in blacking the name of this gentleman. I remember saying to him, "You were so well satisfied at the time when List was conducting the campaign against Yugoslavia and Greece; you were quite content with him." And in this connection, it is interesting that the Russian commission that talked with me for about two days at Mondorf*—at the end of the conversation, one of the generals took me aside and said, "Tell me, how did it come that you sent your very best generals home? We, too, have sent generals away, but we brought them back afterwards. We have put them back into their jobs." And he mentioned the name of Timoshenko. He said Timoshenko too had lost the battle of the—some place north of the Caucasus, I can't think of the name now—but afterwards he was put back; he was given his command, "Whereas you, you are working now with third-rate people."

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*See footnote, p. 1193 of this volume.

And the third thing, the third characteristic was his overwhelming mistrust. And he must have sensed it quite often that we, too, would have noticed his attitude. And he said then, "You don't have to take it that way. I simply must be distrustful, that is, I simply must always feel that something is going on; I mean, I must rather depend on my nose and some sort of sixth sense. I must be distrustful. That is, in all of the reports that I receive, all the reports from the front, and all the reports of action within the country, I must be just as mistrustful as I am against persons, against all individuals. I must have that deep-seated mistrust." That is, until the facts would prove a matter as being absolutely settled and successful, he would always have the greatest mistrust for it.

Q. Would you say he was pessimistic as well?

A. No, he wasn't a pessimist. On the contrary, he was an optimist, but he always said he had to be distrustful, because he had such a deep-seated hatred for reports that had been doctored up, that had been beautified; reports that he called "reports made on purpose;" and he would always say, "I must be distrustful like this, because people are always trying to report things to me the way I want to hear them, and therefore, I must doubt them until I have absolute certainty of their correctness." After that must be added, that he sensed perfectly well in a way that in the military personnel that surrounded him, he had actually a trace of the old bourgeois world of olden days; that is, not of the world of National Socialism—that is, in the sense that he did not have any revolutionaries that had grown out of their own power, but they were in a sense the most conservative elements that Germany ever had produced. Then it is not insignificant that he should have made the statement: "You know, with the youth that is coming, a new generation is growing up," and in this connection the putsch of the storm troops in 1934 must be understood; that is, Roehm wanted to draw the youthful elements from the army and the storm troops and create a new revolutionary military caste. And that naturally was condemned most sharply by Hitler, because he did not want to do without the ability and the knowledge and the study of the old generation, because he knew perfectly well that those things had to be learned and had to be studied and had to be based on experience. And this entire distrustful being, this entire distrustful characteristic, one can't explain; that is, at least I can't explain it any other way to myself except by considering that he was a revolutionary person; and the fight that he fought from 1919, '20 to 1933, that is the time that he called "the fifteen years of fighting," all that he considered a fight against the old State organizations; and he looked distrustfully upon any element of that as being pointed directly against him. That is, I can't explain it any other way except this: that his characteristic of mistrust grew from this revolutionary period. On the other hand, he was absolutely convinced that he was a very thorough connoisseur of human character; and naturally he was not, to the degree in which he thought himself. For he often formed an opinion after conversations of two hours, and I could have said, "You don't know this man. I have known him for 25 years." He asked me before the Norwegian campaign began, "Whom are we going to charge with responsibility for the Norway battles?" I suggested to him General Falkenhorst,* who had been with the Iron Legions in the Baltic states, Latvia and Estonia, and who had also been in Finland together with von der Goltz. He said, "I want to see the general. I want to talk to him personally." He talked with the general for one hour, and then without even consulting with me or giving me any idea, he said, "I charge you with this task." And after he had gone, he said, "The general makes an excellent impression, a very fine impression." After the Norwegian campaign, with all its bloodshed, with all its failures, had after all succeeded (for it did succeed in the overall strategy) he said, "You see it was an excellent proposal. He is an excellent general, and he is a fine general. I said that right away." Then there were three points; there was one complaint from Goering, in which he said he had sent parachutists up to Norway, and that Falkenhorst had put these parachutists in three different spots, and Goering complained about that. And then Falkenhorst, at the beginning of the Russian campaign, made that advance towards the Murmansk railroad from Rovaniemi. There was one element—that was a regiment of the Waffen SS—and Falkenhorst complained about this regiment, and said that the regiment had not been trained very well, and that it had not filled its function, had not met its task; and there, he did his first wrong step, that is, the step that led him towards disaster, because naturally, Himmler now stood up for his SS; and from then on they said, "Falkenhorst has done everything wrong from the very beginning."

Q. Himmler said that, or Hitler?

A. It was Himmler who said that to Hitler, and then Hitler naturally started getting suspicious and distrustful right away, and said, "No, it isn't my SS regiment that is bad; it has the bad leadership of Falkenhorst." Then the remainder was accomplished by Terboven, who quite openly, whenever he was with Hitler, detracted from Falkenhorst and always said that "Falkenhorst was no good; Falkenhorst didn't do this right and didn't do that right," and so on. And that went on so far, that years later it was even stated that Falkenhorst, during the advance from Trondhjem to Lillehammer, had actually been seen sitting in a ditch on the highway, crying. I have fought against that all the time. I have tried to insist that he come, that he should make a report, that he should receive him, to have him make a statement, and he always said, "No, I don't want to see him. You can handle it perfectly well. I don't want to have anything to do with him." And I said, "Well then, at least get him relieved. It is a very difficult position for a general who, after all has a position of confidence and responsibility, to be sitting up there with the absolute certainty that he does not enjoy the trust of the Supreme Commander of the Armed Forces any longer. Let's get him relieved." Then he would always say, "No, we will think about this later;" and it was always the same thing whenever Terboven was there for an audience. Then afterwards the shooting would start against Falkenhorst again. That is just one of so many examples.

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*See interrogations of Nikolaus von Falkenhorst, p. 1534 of this volume.

Now I would like to state a very last example in this connection: The 9th Army was deployed east of Berlin, between Frankfurt and Kuestrin, towards the Russian front. In the central sector, the commanding general was General Weidling, who was known to me as a very courageous and extremely good general. By some source of intelligence (I don't know which, I think it was the SS or Himmler) news was brought to the Chancellory that General Weidling had already pulled back his staff, that is, he was pulling back his front, and that he had already pulled back his staff to Doeberitz, which was a town near Berlin. Actually, the General has merely removed from his headquarters the supply trains, well, the service troops, because you don't use those in your fighting position. The order was given that the General was supposed to be taken immediately and shot. I mediated, that is, I stepped in there and stopped that. That is, the General Staff of the Army had been ordered that the man should be arrested on the spot and shot. On the 23d, the last day that I saw Hitler, this General was at the Reich Chancellory, for he had said, "That is out of the question. I am going right to the Reich Chancellory. I am going to see Hitler." Naturally, I didn't get to see that any more, for that was handled by Krebs; but Weitling came personally and said, "I want to talk with my commander-in-chief about this." And when I was already in that camp in the woods near Waaren, I was called up to the phone by Krebs, and Krebs said, "Listen, I will have to tell you something interesting that has happened. General Weidling has spent two hours with the Fuehrer at the Reich Chancellory, and the Fuehrer has given him the command over all the troops in Berlin, and has stated that he is an excellent general."

Now comes the fourth point of the characteristics that were strong in him, and that would be the exaggerations. And this element I am bringing up especially now, because in these documents of the conversations in the General Staff or at the headquarters, it is so evident that he always suspected this front formed by the armed forces against him; and against this front which he accepted, he used the most incredible exaggerations in order to impress them. And then he didn't talk with any one individual, but he got himself the entire group, the Supreme Commanders; the Supreme Commanders of the services, the Commanders of the army groups, the Commanders of the armies, and then he just gave out with a propagandist speech; and then would come these exaggerations as "Our border must be the Urals," or "Through the Caucasus, we must penetrate into Syria," or "We must maintain bases against England so that she will never be able to set foot again on the Continent;" and he talked himself into these frantic moods of exaggeration. And that mood did not apply to the goals in military operations, but also to the demands, for instance, in armaments and munitions. As an example: Question: "How many field howitzers, light ones, are we producing per month?" My answer: "About 160 perhaps." "I order 900." Another example: Question: "How many rounds of flak ammunition, .88, are being produced a month?" Answer: "200,000 rounds." "I demand 2,000,000." Well, I simply said, "How can we do it? Every single grenade or flak grenade has an automatic clockwork detonator. We don't have enough. We have very few factories that make clockwork detonators like that." Then he would say, "You don't understand that. I will talk it over with Speer, and then we will just build the factories, and within half a year we will have these detonators." Still a third example: the one-inch flak battery, flak gun, wasn't adequate in its range and height. It didn't shoot high enough, and so a heavier gun was to be built, a gun of 3.7 centimeters; and I was present when he discussed this with Speer. Speer then said, "We can only produce that if we stop the production of 2. centimeter guns, because we will just substitute the 3.7 guns for 2. centimeter guns as before." Answer: "That is absolutely out of the question. We will continue with the production of 2. centimeter guns, at the rate of 2,000 a year, and as far as the others are concerned, within a year the same number of 3.7's." When I talked to him about this later, he said, "You see, I had to take this entire production and armament business away from you because you always see only the difficulties. I had to give this to an organizer, to an industrialist, to a man who knew about factories, because you people just can't do that. I had to take it away from you." Well, those things naturally went day and night, things of this matter went day and night. I remember one incident that happened around the winter of 1944, more exactly, Christmas time '44, when he called Speer. "How many machine guns are we producing now, Speer?" And Speer replied, "3,500." Hitler then said, "As a Christmas present from you, I wish, that beginning January, we will produce 7,000. I don't have any further questions for you. My Christmas present, I have just told you about." But all these are absolute realities, that is, actually the things took place the way I tell them. And naturally, when he was in a good mood we would occasionally talk about this, and then sometimes he might say something like this: "Keitel, one must demand the impossible, because then one perhaps obtains the possible."

Well, naturally, these were the four points, and regarding these exaggerations, I have seen him for many years, and therefore, I naturally came to the point where I didn't take them seriously any more. At first, I must confess, they left me perplexed, that is, they made me "fall off my chair," so to speak; and then finally I just realized that I had to tell myself, "These things aren't eaten as hot as they are cooked."

Then another example that happens to come to my mind: After the invasion, that is, after the Americans and British had gained a foothold on the Normandy coast, he told me at Klessheim, down there near the Bavarian border—that was on the same day that Horthy was there, and although at that time naturally the negotiations with Horthy stood in the foreground—he still said, "If we have a front to contend with over in the West, then we have to form some more divisions." So I said, "Very well, I will get in touch right way with the Army of the Interior and see about these reserves." And when he said, "What do you say, how many?" I said "I guess I will ask for 10 divisions to be formed from the army of the Interior." Then he said, "That is absolutely ridiculous. Forty divisions, that is what I want." Well then, naturally, one was absolutely physically sick; and then finally we compromised on 25 divisions. The placement into service of divisions of that sort wasn't something that could be done formally, with regular tables of organization, and so forth. It was strictly an improvisation. Then he would say, "Naturally, to set this thing up according to the normal tables, it would be very easy, and you could do that alone, but when it comes to improvising, that is where I am needed." And then, at such an occasion, he would summon Jodl; and he would summon the Chief of Staff of the Army; and he would summon the general commanding the army of the reserves or the interior; and everybody else who might be in any way involved in this project; and then he would have the whole circle together and give them a sort of a propaganda speech; and at the end he would say, "I demand, at the end of 8 days, a tangible, concrete proposal of how the thing is going to be done." Then, all sorts of subterfuges and substitution devices were made; that is, regiments were pulled out from certain sectors of the front and were enlarged into divisions, and things of that sort were done; and with the greatest difficulties, we actually did get up 25 divisions, and 5 armored divisions, that is, we got up 30 divisions. And then at the end, maybe I would still have to hear something like this: "If I had depended on you, then I would have had maybe 10 divisions, whereas by my demanding the impossible, I obtained the utmost possible."

And now, finally, there is one more subject which is very characteristic and significant for Hitler. He had, I might call it, three different languages, that is, three different patterns and directions in which he spoke. Before the political leaders, the Gauleiters, the old fighters, he had a very characteristic, very peculiar way of presenting his thoughts, of speaking. The second was when he was talking to the public, be it in the Reichstag or be it to the entire people, that was entirely different, and yet on the same subject. Then he also used quite different idioms and quite different formulas for expressing thoughts, and he always wound up in a sort of inspiring thought at the end, and he always turned to the Almighty. He had a very definite singular way of talking to the people, and all his speeches, be they to the Reichstag or be they to the Gauleiters, he always dictated them personally. For the Gauleiters, he normally talked freely, that is, without manuscript, and his speech was then afterwards taken down by shorthand during the speech; and whatever was published of that, he corrected personally, that is, he would get the transcript and correct it himself, and strike out and determine himself what was going to be given to the press; whereas the speeches in the Reichstag, he always dictated personally, and then he read through them and he redrafted them two or three times, and then presented them in final form and read them off the manuscripts. And then finally there was a third form, and that was when he spoke before the officers, that is, before the generals; and then, well, he naturally spoke to the generals in smaller groups, but occasionally also in a very large group. It was at least twice or three times that he addressed a very large body of officers in the building where the Reichstag convened, that is, the theater, the Kroll Opera, and he worded his speech in such a way that the officers in the end would always leave quite impressed and satisfied with his oratory; and into all these speeches he would always bring his main ideology. He would always find a way of getting his ideology into these speeches, saying "Where would the company be if everybody had a voice and said 'Well, let's vote on how we are going to do that'; and the gentlemen of the officer corps will certainly confirm this, that that would be an impossible situation." And then came the famous slogan: "A criticism from bottom to top doesn't exist. There is only one criticism, and it goes from the top down. The regimental commander can criticize his officers and his men, but his men can never criticize the commander." And he said, "I am a soldier. I have gone through the World War, and I look at my political life from a military point of view, and I maintain that there is no criticizing from the bottom towards the top. There is only one, from the top down."

Hitler's Relations with Eva Braun

Q. I have wondered about Eva Braun; did you ever meet Eva Braun, Field Marshal?

A. I have seen her, yes. She wasn't very tall; she was between small and medium; very slender and very elegant appearing. At the Berghof, I probably did meet her in the corridors, for naturally when there were soldiers, you didn't see anybody of the environs; they were all gone.

Q. We heard that Hitler had two children by Eva Braun. Have you ever heard that story? Do you think there is anything to it?

A. I don't believe it. I don't think that is true. I never knew of that. She was, as I said, very slender, elegant appearance, quite nice legs—one could see that—but I never got to know her very much—she seemed to be very, not shy, but reticent and retiring, and a very, very nice person, dark blonde. She stood very much in the background, and one saw her very rarely. It was merely by chance that one saw her.

V. ERNST KALTENBRUNNER*

Excerpts from Testimony of Ernst Kaltenbrunner, taken at Nurnberg, Germany, 21 September 1945, 1430–1645, by Col. Howard A. Brundage, JAGD. Also present: Siegfried Ramler, Interpreters S/Sgt. William A. Weigel, Reporter.

Kaltenbrunner's Opinion of Ribbentrop and His Diplomacy

Q. You mentioned the name Ribbentrop. What sort of person is Ribbentrop?

A. He is an exceptionally industrious man and he is very concerned about every material factor in his work. I think that any work that he has taken over he will carry out with the utmost devotion to duty. A different form of his nature is his exceptional conceit and ambition, even more conceited than ambitious, externally and in all his activities as Foreign Minister. This has shown itself especially in the following way, namely, that he has never allowed anybody to take a hand in any part of his field or allowed anybody to mix up in it. He especially pointed out that he, according to the list of rank, is the highest and the most important minister of the Reich. In his relation to Hitler, he was exceptionally obedient, and I do not believe that he ever dared to carry out anything against the will of Hitler. He was very anxious to find out the opinion of Hitler about any specific thing, and very often, as it seemed to many lookers-on, he took this for his own opinion and then presented it to Hitler, partly because he wanted the favor of the Fuehrer.

In regard to his ways of life, his forms of discussion, his mannerisms, his relations to his subordinates, and to people outside, he behaved in a very peculiar manner. At times, he gave the impression of being a very dignified, quiet, well-informed man. Then he could be very polite and even amiable. On the other hand, he was at times very nervous and sometimes even rude, and he sometimes even went to the point of insulting people.

In the first place, it has to be said that he was a very intolerant man. It was never possible to teach him or to advise him. At the very best, he would respond, "Oh, yes, I have thought so, too, and this is my opinion, too."

Q. Did you have any official relations with him?

A. Yes.

Q. In what regard?

A. I was in no way his subordinate, but I wanted to bring to him those results of work which belonged to his ministry, namely, starting from the beginning of 1944. In this respect, he was very deaf and he tried to refuse the accepting of any information that did not belong strictly to his ministry, because he had a point of view that only professional diplomats would understand foreign political affairs, whereas he quite overlooked the fact that he himself did not come under this classification either. He believed that his information should come from two sources, firstly, from the different legations—that is, from the foreign representations that he had—and from an information service of the Foreign Office, which was subordinate to different people, at one time to a certain Henke. He only relied upon a few people that he named.

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*Kaltenbrunner's capacity for evasion and denial reached the point at the trial where he even refused to acknowledge his own signature. A caveat is therefore entered as to the veracity of Kaltenbrunner's statements in these interrogations on matters touching his personal responsibility.

It was very difficult to get in personal touch with him, in order to prove to him the correctness of one's own opinion and the necessity for obtaining advice from different other sources. Not only was there no subordinate relation with him, but it was also difficult to receive an invitation to him. If such conferences did result, at times he was amiable. At times, he was curt and rude. In this direction he was a man whose nature was not adjusted to any certain form. He never made it possible for anybody to be present at any conference between him and Hitler.

Q. Wherein can you place any responsibility on Ribbentrop for the disaster that overtook Germany?

A. This is a huge question. Perhaps for an introduction to all these questions, it should be said that one generally spoke about the fact that Herr von Ribbentrop was very much subject to the influence and to the thoughts of his wife.

In foreign political things, I think I have only got to know Ribbentrop at the end of 1943. This was a time when the war had progressed so far that an end of war would have to come about not by military means, but by a diplomatic means, which had not occurred so far. This was a time where the wide public and naturally also higher placed persons looked around in vain for some activity of Ribbentrop. For me personally, it was then not clear whether there was a lack of activity on Ribbentrop's side or whether it was so that Ribbentrop could not dare to proceed against the wish of Hitler. In this time I had practically never been with Hitler and did not know his own opinions about it.

I first remarked on the mistakes of Ribbentrop in the southeastern province. A very important thing in the southeastern politics of the Reich was that one delivered Croatia to the Italian influence, and, certainly, that one looked upon Bulgaria as a power which was a friendly power to Germany in the Balkans.

While, according to my opinion, which was not only my opinion but this was in the first place the opinion and basis of activities of the envoy Neubacher, not Bulgaria but Serbia should be looked upon as a friend of Germany in the Balkan States.

It seemed to me, according to reports, that the Balkan affairs were handled in the following manner: The Reich had favored Bulgaria, which in its whole interior structure had already leaned towards Bolshevism. This one could especially notice by the economical construction of Bulgaria, namely, in the agricultural communities. This was partly due to the activities of the agricultural unions that wanted to go away from the patriotic ideas of the farmers and go over to a more union form of a system, meaning that they wanted the farmer to act independently and only be influenced by his family and not be led by a union.

This system of unions opened the doors to all sorts of Communistic propaganda in Bulgaria, and one could almost see when Bulgaria was going to be ripe for Communism.

Serbia, on the other hand, had just as before kept up all this individual structure, their land structure and their structure on the farms. It was influenced by way of religion through the Serbian Orthodox Church. All Serbian farmers, that is, all Serbian agricultural people, were of an anti-Communistic opinion. In a war between an anti-Soviet Germany and a Communistic Russia, Germany selected, through the Foreign Minister Ribbentrop, Bulgaria and not Serbia.

Hitler's "Inner Circle"

Q. Now that you have a chance to look back, who do you say were the men that made up the inner circle around Hitler?

A. Hitler was so sure of himself that influence on his person would have been very difficult. Despite all this, the surrounding people should have brought about a certain influence on him, and of those who surrounded him, there are in the first instance Bormann. Bormann has been with Hitler daily ever since Hess had flown away. Then Goebbels was in his close circle. These are the two people who have the greatest possibilities of exercising an influence on Hitler.

Then we come to the second group of people who had regular access to Hitler and could have exercised a certain amount of influence and of whose judgment Hitler thought something. He didn't always think a lot of them, but he listened to them. They are Ribbentrop, Goering, and Himmler; from the time of Todt's death and Speer becoming Minister of Armament, also he was in the closer circle of Hitler. But Hitler always cut off any reports by his people and expressed his own opinion regardless of what the others wanted to say. Only people like Bormann and Goebbels, who were for years in his close surroundings, should have exercised a larger influence on him. Goering's influence was relatively very small. I could show proof of this by a few examples quite easily.

Q. You mean towards the end it was small?

A. I think that Goering lost his influence already two years prior to the end. Goering's influence ceased to exist virtually completely from the moment it was evident that the German air force was inferior technically to the air force of the allies. Hitler did not hold Goering responsible for the failure as regards technical developments of the air force, because he said that "It is my own fault. I knew that Goering was no technical expert, and yet I have made him Chief of the air force." He was of the opinion that he had only appointed Goering as head of the aircraft personnel.

Responsibility for Concentration Camps

Q. Can you explain why the SS has gained its reputation as a gang of criminals?

A. I should think that they have to thank Hitler for that reputation, because of his order to Himmler. They were ordered to conduct the concentration camps. Though the concentration camps were instituted before Himmler by Goering, they were not in that form.

Q. Do you know that to be a fact of your knowledge, the fact that these concentration camps were being operated by Himmler through Hitler?

A. I know that Hitler said to Himmler that "I take the full responsibility of what takes place in concentration camps." Whereupon Himmler said, "I will take that responsibility."

Q. Well, do you believe Hitler knew to what extent people were being gassed and tortured and killed in concentration camps?

A. Besides Himmler, nobody would have known that. Up to a certain extent he must have known.

Excerpts from Testimony of Ernst Kaltenbrunner, taken at Nurnberg, Germany, 3 October 1945, 1445-1745, by Lt. Col. Smith W. Brookhart, IGD. Also present: Capt. Jesse F. Landrum, Reporter; Mr. Bernard Reymon, Interpreter.

Responsibility for Mobile Gas Chambers

Q. When did the use of the mobile gas chamber van first come to your attention?

A. I can't say when it was but as soon as I read it in the foreign press I immediately took up the matter with Goebbels and sent at the same time a photostatic reproduction of the article to Hitler with a letter in which I expressed the terrible consequences which such things would have.

Q. Why did you take it up with Goebbels?

A. Because he was responsible for the press and it was he who allowed the foreign press to enter Germany; and because he was the man who had dared against Himmler and over Himmler to talk to Hitler.

Q. Was your objection because the news had gotten out in the foreign press and that was going to be embarrassing?

A. Certainly not; because I was myself shaken by these facts.

Q. Why didn't you go to Himmler? You say you knew he was responsible for these things.

A. Precisely because I held him responsible for it.

Q. Why didn't you take action in your own RSHA?* That was the instrument through which these accusations were being carried out.

A. This information has not the slightest foundation.

Q. Witness after witness, by testimony and affidavit, has said the gas chamber killings were done on general or special orders of Kaltenbrunner.

A. Show me one of those men or any one of those orders. It is utterly impossible.

Q. The testimony of one of the high officials was that most orders initiated with Himmler, the killings could not happen without order of Hitler or without knowledge of Himmler but practically all of the orders came out through Kaltenbrunner.

A. Entirely impossible.

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*The RSHA (Reichssicherheitshauptamt) or Reich Main Security Office, headed by Kaltenbrunner, included the SD, the Gestapo, the Kripo, and other policing agencies. See document L–219, vol. VII, p. 1053; charts 16 and 19, vol. VIII (in pocket).

Excerpts from Testimony of Ernst Kaltenbrunner, taken at Nurnberg, Germany, 5 October 1945, 1030–1210, by Lt. Col. Smith W. Brookhart, IGD. Also present: Capt. Jesse F. Landrum, Reporter; T/5 Gunter Kosse, Interpreter.

Kaltenbrunner's Stand on Concentration Camps

Q. You had information at your finger tips from all over the Reich; you made reports on conditions and must have included matters of new inmates for concentration camps and new forced labor groups?

A. No. I had nothing to do with shipments to the concentration camps; I naturally knew that there were concentration camps but that's all I knew about that.

Q. Well, according to the sworn statement of Colonel Mildner,* orders for deportation of Jews, in the Reich and in countries occupied by German troops, to labor and concentration camps were issued by Himmler. Orders had his signature and were classified TOP SECRET. They passed through you, and before you, Heydrich to Mueller.

A. No.

Q. Orders also went directly from Himmler to local headquarters, but you were always informed.

A. No, that's not true, either.

Q. Orders of Himmler concerning type of labor employment of prisoners and for the extermination of Jews went directly through Pohl and from him to Gluecks, either written as TOP SECRET or sometimes orally, and always as adviser to Himmler was Kaltenbrunner on all Jewish questions, on all deportations to camps.

A. Never. He must mix that with Heydrich's time.

Q. We are only concerned at this point with Kaltenbrunner's time.

A. But I am the one who is accused here and, therefore, I have to take some kind of a stand.

Q. That's your right. The basis for Colonel Mildner's statements as to channels through which orders were issued were his conversations with Mueller and other people in the SIPO [Security police].

A. He must have talked with Mueller about that, then.

Q. That's what he swears.

A. That might be possible, that Mueller tried to push the fault on somebody else; I don't doubt that at all, but I can only say again that Mueller was only the tool of Himmler. I must say again that I never got any plenipotentiary for the Gestapo. I said many times before that I took a stand against many things but there was nothing I could do.

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*See document L–35, Vol. VII, p. 780.

Q. There is nothing in what I have brought to your attention that shows any disposition for Mueller to dodge his responsibility; it's merely the inclusion of the channels which included yourself through which these orders passed.

A. Like I said, that a basis for this Mildner got through conversations with Mueller and therefore I say that Mueller is trying to push the fault on somebody else. Mildner himself gets all mixed up because in one paragraph he says that a report went from Himmler to Mueller and then he said it went from Himmler through me to Mueller.

Q. That's correct. On different occasions the channels differed, as you have said, but he adds what you failed to add, that you were always informed.

A. Everybody in Germany knew that those were affairs of the Gestapo and the deportation of the Jews was done by the Gestapo on orders from Himmler.

Q. After being arrested and sent to concentration camps, in whose charge was the treatment, health, and assignment of work for the internees?

A. Pohl.

Q. What reports were received by Kaltenbrunner from concentration camps?

A. Not one.

Q. What was the basis for your classifying camps into classes one, two, or three?

A. I never classified them myself but that was all over.

Q. What office did it come out of?

A. That could only have come from Pohl or from Himmler.

Q. What was the purpose of such classification?

A. Probably the difference of work production.

Q. Was there any distinction made as to the character of the inmates, whether they were there because of alleged racial inferiority—as the Jews—or because of their political beliefs?

A. I don't know that but I am sure to know that was not the reason. I think it was more the kind of work, like agriculture or industry.

Q. Who picked the location of the concentration camps?

A. Maybe Himmler.

Q. Why do you say that?

A. Because that was his work and he was supposed to build them up.

Q. Who caused the building of the gas chambers that were designed as shower rooms?

A. I don't know that.

Q. You don't like to have questions asked about gas chambers, do you?

A. Why shouldn't I like such a question? I can only say again that already in Bamberg a paper was showed to me where I was accused of being a specialist and adviser to Hitler concerning these gas chambers and that naturally could not be very pleasant and right to me.

Q. When did you first have any knowledge of the use or the planned use or the result of the use of gas through chambers, mobile vans, or other means of exterminating these unwanted people?

A. I don't know the time, but as soon as I got foreign reports about that I showed them to Hitler and Himmler—not to Himmler but to Hitler—and Goebbels.

Q. What did they say?

A. I didn't show it to them personally, but I sent it to them by mail, and a few days later I got word that both of them are going to talk this over with Himmler.

Q. And after that, the use increased, didn't it?

A. I don't know that.

Q. And Kaltenbrunner was sending in advice all the while?

A. That's a statement which I cannot verify at all.

Q. That's a statement that many, many other representatives of the Nazi government continue to make.

A. That is a lie if anybody makes such a statement. I want you to consider that between 1933 and 1943 ten years passed in which I did not have anything to do with that office. How can you make such a statement, because at that time, as it was reported from foreign countries, things like that were done by Himmler.

Q. Because they continued to be done through 1943, 1944, and until the allied armies overran the concentration camps in 1945, and through those years Kaltenbrunner was Chief of the RSHA which had them in charge.

A. No. I was never in charge of any such, but orders were done, as I said in my statement in London, by Himmler or Pohl. No commander of any concentration camp in any part of Germany can say that he ever got the slightest order from me.

Q. Would it surprise you to know that that is substantially the same answer that everyone else is giving that has had anything to do with these matters?

A. I can't know but I cannot explain that nothing else otherwise can be proved through evidence.

Excerpts from Testimony of Ernst Kaltenbrunner, taken at Nurnberg, Germany, 5 October 1945, 1440–1465, by Lt. Smith W. Brookhart, IGD, OUSCC. Also present: Nancy M. Shields, BCV, Reporter; H. E. Mankiewitz, Interpreter.

"The Gestapo Never Harmed Anyone"

Q. Let us consider what some of the officials think about your personal responsibilities for Amt IV* of the RSHA**, with particular regard to repressive measures in the concentration camps. You have known Schellenberg a long time, haven't you?

A. Since 1943.

Q. And he has served in Amt VI*** during that period?

A. Yes.

Q. In his opinion, Kaltenbrunner was responsible in conjunction with Mueller for all punishments and protective arrests of important persons.

A. Will you let me face Schellenberg and some of his group leaders and they will tell you that it is absolutely untrue. Schellenberg must be the person who knows best what is the connection between Amt IV and Himmler because Schellenberg has been previously in the Gestapo himself.

Q. And was, therefore, responsible himself for some of the punishments and atrocities that were committed?

A. I don't know. I don't know in what department of Amt IV he was employed but he was fully aware of the authority and he must have known very well that those authorities were not mine.

Q. Amt IV, the Gestapo, was the active organization that performed the repressive action and punishments and executions in concentration camps, isn't that right?

A. This information is certainly wrong and I refer to my statement in London and the reason is because I consider Himmler himself responsible for those things.

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*The Gestapo.

**See footnote, p. 1299 of this volume.

***Foreign Political Intelligence Service.

Q. Who did the job locally? The Gestapo?

A. No, the concentration camps. The concentration camps themselves and they only acted on the orders of Himmler, Pohl, or Gluecks.

Q. Who, in concentration camps, inflicted punishment, performed executions, gassed prisoners, and all the other various atrocities?

A. That I could not say—it must be men who were subordinate to the commander of the camps.

Q. It was the Gestapo, and you know it was the Gestapo for the most part!

A. The Gestapo most certainly had no man in concentration camps who had ever done any harm to anyone.

Q. That is the best one yet!

A. You must make a mistake between the guards and the Gestapo. That is something entirely different because the guards of the concentration camps were not subordinate to the Gestapo but to Pohl and that was entirely different.

Q. Those guards were Deathshead SS, were they not?

A. Yes, but the Deathshead SS were not Gestapo. That is proof that they were not Gestapo. The Deathshead organization is the concentration camp guardsmen.

Q. And you say the dirty work was done by them, is that it?

A. Of course.

Q. How do you know that?

A. Because there were no men in the concentration camps who were subordinate to the Gestapo but the guards who were there who were only subordinate to Pohl and over Pohl to Himmler. Otherwise, the guards were subordinate to Mueller and they were never subordinate to Mueller as things were. Will you ask any man from the concentration camps if he has ever been subordinated to the Gestapo and they will tell you that they were not.

Q. Will he also tell you that when he had a mass killing to perform that he had a few Gestapo brought in to do the job?

A. No, certainly not. The Gestapo had nothing to do with executions.

Q. Are you sure?

A. I have never heard anything about it.

Q. Then how can you be sure?

A. Certainly I am not sure but I would have heard something about it. The concentration camps were not subordinate to Amt IV and that must be known here, and this does not merely include the buildings but all the staff who are subordinate to Pohl.

Q. And all of those who performed the exterminations and shooting and gassing and all the other means of killing, is that right?

A. I don't know about this. I don't know who was carrying out the shootings.

Q. You were being pretty positive about Pohl's responsibility. I would like to have you carry it clear through, for all the activities of the camp.

A. I have given a statement about concentration camps and that is all. That is not known to me as secret knowledge, but it is known to everybody else and I don't know any more. I have made representations and I have called Hitler's attention to certain conditions. I have repeatedly talked to Hitler about his responsibilities, which he has charged himself with, in these concentration camps.

Q. Hitler?

A. Yes.

Q. What did you say to Hitler and what did he say to you?

A. His stereotyped answer was, "That is none of your concern. That is my arrangement with Himmler and how Himmler carried out his work is his own affair. He is responsible to me."

Q. On what dates did you have these conversations with Hitler?

A. This was when I took office and then several times later.

Q. You have told us here frequently that you knew nothing about concentration camps. How were you even well enough informed to discuss it with Hitler?

A. As much as I knew about concentration camps I have put down in my statement and that is as much as I discussed with Hitler. Primarily, I had to rely on the foreign press. In this respect I saw the second big damage towards the Reich, apart from the inhuman or humanitarian concern.

Testimony of Ernst Kaltenbrunner, taken at Nurnberg, Germany, 8 October 1945, 1030–1210, by Lt. Col. Smith W. Brookhart, IGD. Also present: Capt. Jesse F. Landrum, Reporter; Pfc. George W. Garand, Interpreter.

Hitler's Antipathy to Lawyers and Educated Men

Q. Isn't it true that Hitler and that Himmler both were hostile, had an antipathy for lawyers generally?

A. Well, that one cannot say generally. In many questions Hitler has held himself the utmost exactness to laws and was very much respecting the fact that all forms of law should be observed.

Q. Now, you are being ridiculous and you know it. It is a well known fact that Hitler did not like lawyers, right?

A. Now you are speaking of persons.

Q. Speaking of lawyers in general.

A. They have been repeatedly verbally attacked.

Q. By him?

A. Not only by Hitler but also all other party elements. There have been times where every academic educated man was considered a disturbing element. At least a man who thought too much as a result of his education was called that.

Q. How were you able to gain his confidence in view of your attainments as a lawyer?

A. As a lawyer I had not been known because I had not been in practice; but I had studied law and that was in any case well known. The reasons why Hitler tried to get me to Berlin are in many forms, have to be discussed for a long time, which I have asked for already repeatedly but then nobody wanted to know. But this is by all means necessary because otherwise no one will ever be able to understand my whole character.

Q. We want to understand your character, but we also want to fix the responsibilities for acts that were carried on in your name.

A. Completely agreed. But above all I would also like that persons should be heard who really know me, and not only people who are looking for somebody responsible for what has happened. The man who really is responsible cannot really be made responsible.

Q. Name him.

A. They have been named repeatedly: Himmler, Pohl, Mueller.

Q. What about Hitler?

A. You are speaking of my responsibility. With that you mean the police responsibility. For war and several other things, of course, several other people have been responsible.

Excerpts from Testimony of Ernst Kaltenbrunner, taken in Nurnberg, Germany, 8 October 1945, 1945–2110, by Lt. Col. Smith W. Brookhart, IGD. Also present: Pfc. George W. Garand, Interpreter; T/4 R. R. Kerry, Reporter.

"I Will Be Hanged in Any Case"

A. That is completely wrong. I know such a thing will make no difference to me because in any case, you will sentence me. May I put an addition to this? The colonel in charge of the London Prison that I was in has told me that I would be hanged in any case, no matter what the outcome would be. Since I am fully aware of that, all I want to do is to clear up on the fundamental things that are wrong here.

Q. Have you been subject to any treatment that you consider to be intimidation, coercion, or undue influence since you have been brought to Nurnberg?

A. I have not suffered from wrong treatment.

Q. Have you suffered any threats or any preconceived statements that you are guilty of any crime?

A. Not directly, but I am treated as a man that is already in a criminal prison.

Q. You have been examined at great length because of the multitude of evidence and witnesses that have been presented in the field where you are active.

A. I have not complained about any treatment and I am not complaining now. The difference between the treatment here and in London is like day and night.

Q. The purpose of this extended examination, which today has gone even into the night is to try to crystallize the facts insofar as we are able to get you to testify. Is that clear?

A. Yes.

Q. Let me go ahead then.

Excerpt from Testimony of Ernst Kaltenbrunner, taken at Nurnberg, Germany, 9 October 1945, 1030–1230, by Lt. Col. Smith W. Brookhart, IGD. Also present: Capt. Jesse F. Landrum, Reporter; T/5 Gunter Kosse, Interpreter.

Was Hitler a Criminal?

Q. Whose picture is that?

A. Hitler's.

Q. Was he an honest man?

A. I couldn't find out about his character but it is possible that he was not always honest.

Q. On the basis of what you now know, is he a criminal?

A. I ask not to be asked that question because I am not able to understand everything quite right, but I was not in agreement with his policies during the last years.

Q. You have already been asked the question. Maybe this will make it a little easier for you to answer. Does he look any more like a criminal in that picture where he has on all his paraphernalia?

A. This picture is not very advantageous.

Q. You know he was a criminal by causing other people to do criminal acts, don't you?

A. Well, it is quite certain that he gave orders that you can consider as a criminal act.

Q. Brought on the war and caused all the killing and brought you here today? Right?

A. I don't think I can make history as a prisoner.

Excerpt from Testimony of Ernst Kaltenbrunner, taken in Nurnberg, Germany, 11 October 1945, 1050–1230, by Lt. Col. Smith W. Brookhart, IGD. Also present: Capt. Mark Priceman, Interpreter; T/4 R. R. Kerry, Reporter.

Use of Prisoners for Broadcasts to Allied Troops

Q. Will you look at the make-up of Group IV A with subsections 1, 2, 3, and 4?* What dealings did you have with any of the subchiefs? Consider the next name on the list, Kopkow. Did you have any dealings with him?

A. No. With this section I had no dealings. I met Kopkow only once. This was on the occasion when he was making a report to Himmler. Kopkow's section was concerned with furnishing signal material to enemy agents.

Q. You mean counter-sabotage agents?

A. They were concerned with equipping allied agents, who had parachuted in German-held territory and had been captured by the Germans, with a signal material to make broadcasts to the allied side. Their status was that of German prisoners. This is how I happened to recall the report by Kopkow to Himmler, which I saw in Himmler's place. On that occasion, I did not see Kopkow personally. Kopkow was introduced to me later on at some celebration; I believe on the 9th of November 1944.

Q. What part of your work was concerned with political falsifications as stated in this description of functions here?

A. That I do not know.

Q. What does that refer to?

A. It may be that this signal equipment was meant by this.

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*Section A (Amt IV of the RSHA) dealt with opponents, sabotage, and protective service and was subdivided as follows: A1, Communism, Marxism and associated organization, war crimes, illegal and enemy propaganda; A2, Defense against sabotage, combatting of sabotage, political, falsification; A3, Reaction, opposition, legitimism, liberalism, matters of malicious opposition; A4, Protective service, reports of attempted assassinations, guarding, special jobs, pursuit troops. See Document L–219, Vol. VII, pp. 1053, 1068.

Excerpts from Testimony of Ernst Kaltenbrunner, taken at Nurnberg, Germany, 12 October 1945, 1545–1715, by Lt. Col. Smith W. Brookhart, IGD. Also present: Capt. Jesse F. Landrum, Reporter; Capt. Mark Priceman, Interpreter.

The Mass Execution at Lublin

Q. Did you know a Herr Morgan?

A. No.

Q. Inspector of concentration camps?

A. No, definitely not.

Q. Maybe it will help to refresh your recollection if I recall to you a few of the facts that occurred late in the autumn of 1943 as set forth in the report of Morgan,* following the visit to Lublin. You do recall the time when several thousand Jews were slain in Lublin in one day?

A. No.

Q. And that their bodies were thereafter burned, there being so many that it caused a light dust to lie over the whole town and penetrate the air like smoke?

A. These three stories are such fabrications, especially inasmuch as my person is concerned.

Q. It was during the period in which you were Chief of the Reich Security Police.

A. As I said, these stories are pure inventions, and besides your idea that I had anything to do with it in my official capacity is erroneous.

Q. Referring again to the Lublin murders, the result of this mass execution could not have escaped your attention because as reported by Morgan after his inspection, it resulted in losing much of the available labor supply. There were no more people to work machines and in the handcraft shops. The factories were left with a tremendous stock of raw material, and the people in charge said that the order of the execution came as a complete surprise.

A. I never saw any such report, and I never heard about them.

Q. The local SS Oberfuehrer Muszfeld, who was formerly a confectioner, at Zuckerbaecker in the neighborhood of Kassel, was in immediate charge of the butchery at Lublin, and he told Morgan that he took credit for killing 20,000 by his own hand. Was he known to you?

A. No.

Q. A man of those attainments would certainly be pretty well known throughout the service, would he not?

A. He definitely did not belong to my staff.

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* Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. You say that you received no reports of the effects of this mass extermination because of the loss of manpower?

A. Definitely not. Even if this report were true, it is obvious that such a report would not have been addressed to me, but it would have been addressed to a person concerned with manpower questions, for instance, Pohl, chief of the concentration camps, or to Himmler, because Pohl carried on production right inside the concentration camps. He was interested in manpower questions. If I ever had received a report like this, I would immediately have taken it to Himmler or Hitler, and I would have declared to them that things shouldn't be done this way.

Q. The message that came, ordering the mass execution, read in the following terms: "By order of the RFSS,* the Jewish company in the camp Poniatowa is to be carried to its final conclusion."

A. I have never seen any such order.

Q. I will read you the description that Morgan gave as to what took place: "The proceeding was always the same. The night before the execution came the order to build very hastily shelters in zig-zag against air raids. In the early morning came troops and the execution began in these trenches. The prisoners had to leave their work and to attend in the neighborhood of the trenches. When their time came, they had to undress and naked, pass through the trench one after one in an infinite line. Coming to the first dead the victim had to lie down on the dead body and then was killed by a shot from a gun in the neck. This went on so long until the trench was filled and the last person was dead. Then the trenches were closed. The naked men had their own trenches, and the women theirs. Children were with their mothers. None of the victims had been ill-treated before executions. All passed in a methodical, silent way. The troops formed only a cordon and had nothing to do with it. There had been a few German police, and the most were Ukrainian. On each place there were only two or three killers who were placed above the trench. Behind them were two or three other men who spent all their time charging empty magazines. So the executions were going very quick, and the responsibility was only in the hands of very few men." Here is a second sentence: "It was the old, tried system." Do you agree that it was an old tried system?

A. I am not familiar with the method.

Q. Further on, this report of Morgan's states that extermination had been so complete that there was at last nobody left to burn the cadavers, and it was only with great difficulty that they rounded up enough Russian prisoners of war to do the burying. Did you know SS Sturmbannfuehrer Wippern, in command at Lublin?

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*Reich Leader of the SS (Himmler).

A. No.

Q. What became of all the money, jewelry, and gold of the dead prisoners out of these camps?

A. I don't know.

Q. Didn't you ever receive any report as to what was done with these valuables?

A. No.

Q. You disclaim any knowledge of this incident that took place in the autumn of 1943 at Lublin?

A. Yes. It is impossible that this report had been sent to me. I would have been to see Himmler or Hitler on the very first day; on the very same day.

Q. When Morgan made inquiries into the reasons for the mass executions, he was told by the local Sturmbannfuehrer that this was top secret but that it had been ordered by Himmler himself, after a personal report by Dr. Kaltenbrunner. How do you account for that?

A. Absolutely impossible.

Q. What report did you ever make on the camp at Lublin, or camps holding Jewish inmates elsewhere, that contained any recommendation which would lead to extermination of these people?

A. I never in my life made any such recommendations.

Q. That's all you have to say about it, is it?

A. Yes.

Excerpts from Testimony of Ernst Kaltenbrunner, taken at Nurnberg, Germany, 16 October 1945, 1030–1210, by Lt. Col. Smith W. Brookhart, IGD. Also present: Nancy M. Shields, BCV, Reporter; Captain H. W. Frank, Interpreter.

Lynching of Enemy "Terror Aviators"

Q. I would like to have you tell us about the conference that was held at the Fuehrer's headquarters on 6 June 1944 at Klessheim in the afternoon.

A. Yes.

Q. Do you recall that conference?

A. I don't know which conference you are talking about.

Q. (Referring to Doc. 735–PS) You reported to the Assistant Chief of the Command Staff of the Wehrmacht that a discussion was held a short time before, between Goering, Ribbentrop (as Foreign Secretary), Himmler (as Reichsfuehrer SS) on the subject of the treatment of enemy "terror aviators".

A. I have never made such a report.

Q. Let me refresh you further. Whereas the Foreign Secretary had wanted to include every type of "terror attack" against the domestic population, agreement was reached at the conference that only strafing committed directly against civilian populations would be deemed a criminal act.

A. I have never participated in any such conference.

Q. I show you a photostatic copy of the secret summary of Warlimont's conference with Kaltenbrunner on the lynching of certain allied aviators, in its German text and ask you to read it and tell us what you recall about the conference.

A. (Reading document) This is totally incorrect.

Q. Finish reading it, then tell us what you think you know about it.

A. This must be a mix-up with the Reichsfuehrer SS or some other person. I have never received an invitation to comment on this question, but much later when I heard about it I have spoken against it in reports.

Q. How much later?

A. That I cannot say but I assume it was in the summer of 1944.

Q. From whom did you hear about it?

A. These reports came from various districts of the Reich, saying that the population intended to lynch these fliers who had inflicted such punishment and caused so many victims.

Q. But that was only after you had set up through your organization a plan for going into and reporting on such cases, isn't that right?

A. No. I have never made a plan but have summarized the reports which I received and submitted the summary to a higher authority, saying that such action was impossible. You can see from one of the last paragraphs of this report that the highest people in the Reich were occupied with this question and I did not belong to that highest department.

Q. Without regard to what you belonged to, the fact is that you conferred with Warlimont and you expressed views as shown by this document?

A. No. I had no conference with Warlimont.

Q. Do you believe that this is not a correct copy of an official document?

A. I don't know, but the contents are not correct.

Q. You know that a very efficient German General Staff would never write a top secret document without being sure of the facts; isn't that right?

A. This can only be an error on the part of Warlimont regarding the person.

Q. Another instance where everyone else is wrong but Kaltenbrunner?

A. Permit me to suggest that you ask Warlimont. I have no recollection of having had any discussion with him and under the circumstances I do not believe that he would have said it.

Q. What did you say when Warlimont asked whether cases involving supposed criminal enemy fliers arose, of whether the SD were in a position to investigate and construct such cases in all details?

A. I have never discussed this subject with Warlimont.

Q. But you recall you told him that you were not in a position to make such investigations or to prepare such cases?

A. No.

INTERPRETER: He says it is necessary for him to say some more on the subject. Do you want to hear it?

Q. As long as it is pertinent.

A. Warlimont says here: "To hand over to SD". Ask Warlimont whether he considered the SD an executive department or not.

Q. Let us first ask Kaltenbrunner what he said when Warlimont suggested that the procedure for the segregation of such fliers should be handled through the SD?

A. He has never discussed that with me at all and I could therefore have made no definition of my attitude. I am fully convinced, however, that I know whom he has talked to about this, but it was not me.

Q. Who was it?

A. It could only have been a person authorized by Himmler, because this was a matter for the OKW,* the Foreign Minister and the Reichsfuehrer SS office.

Q. It could have been anyone.

A. And it could only have been a person authorized in this case by Himmler, who had continuous contact with him.

Q. It could have been anyone and this paper shows it was Kaltenbrunner.

A. There is only one thing—confront me with Warlimont and see what he will say. He will say "No," because he cannot say anything else.

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* The OKW (Obercommando der Wehrmacht) or Armed Forces High Command, headed by Field Marshal Keitel.

Q. There is only one Obergruppenfuehrer Kaltenbrunner, is there not?

A. That is correct, and these matters were always handled by one man in negotiations with the OKW and the Foreign Ministry, who was authorized by Himmler, and that man was Fegelein.

Q. Why do you persist in giving these answers which are obviously in error and probably constitute perjury in the face of established facts?

A. My punishment, I assume, will be the same in any case, and I have therefore no cause to lie to you, but there is no point in confirming someone's error in this case. I cannot do that.

Skorzeny's Use of American Equipment at Friedenthal

Q. I am going to ask you now about your dealings with Skorzeny and what you had to do with the concentration of American guns and vehicles at Friedenthal?

A. Nothing at all.

Q. What use did Skorzeny make of such guns and vehicles?

A. That I do not know.

Q. What use was made of American uniforms by Skorzeny's men?

A. That I do not know, either.

Q. What did you and Schellenberg have to do with these operations?

A. He was the chief of Amt VI and in particular of Department MIL.

Q. You recall, of course, that Skorzeny had special missions such as the rescue of Mussolini?

A. Yes. This he was ordered to do directly by Hitler.

Q. And he also was active on the western front later?

A. That I do not know. I didn't know at the beginning, but I heard about it later.

Q. My question is, what did you have to do with helping his operation? The operation which involved the use of American uniforms, vehicles, guns, and other equipment?

A. I had not helped him in any way and I knew nothing whatsoever about this. Ask him yourself.

Q. You recall, don't you, furnishing him certain foreigners out of concentration camps for special purposes?

A. No.

Q. You had nothing to do with that?

A. No. Ask him. He is here. Put him on this chair, and I will guarantee you that he will say, "No, he had nothing to do with me and never discussed these matters with me." It would be very important for me that you do this and this would furnish proof that I had nothing to do with these matters. If he required assistance from the concentration camps, he could have achieved this through Himmler or Mueller, but not through me.

Kaltenbrunner Considers Himself "A Substitute Guilty Party"

Q. How do you account for the fact that in all these matters concerning concentration camps, you say that it was the responsibility of Himmler, Mueller, Pohl, Gluecks, and others, yet other witnesses always mention Kaltenbrunner?

A. I am convinced that not all other witnesses did say that. I am also convinced that you have never put a statement to the contrary before me, just as I am convinced that hundreds of witnesses would prove me right. If Himmler were alive, I guarantee he would have these questions put to him by you, and not I.

Q. Was Himmler's word good?

A. Not because his word is good but because you would then not be embarrassed about the personality of, in fact, the guilty party.

Q. Let me refer to your own description of Himmler. In some of your earlier interrogations you made reference to questions involving the cases of non-Germans where they became involved in criminal cases and you said that those cases were always referred to Himmler personally to determine the punishment?

A. This is not correct. This concerned a special type of non-German criminals.

Q. Don't you recall, you said: "These examples show, not only what sort of a pedantic old schoolmaster he was and the pleasure he enjoyed by personally inflicting punishment but also how all authority for passing sentences, that is, executive power, was forbidden me?"

A. Yes.

Q. That was your description, wasn't it?

A. Yes.

Q. You would like to have him as your witness, is that correct?

A. Not that he were my witness, but that he were alive so that you could address these questions to him as the guilty party and not me, Kaltenbrunner, because you brought up the question how it is that everybody is always talking about me, while I am always talking about Himmler, Mueller, Pohl, and Gluecks, but whenever I find that these questions you should have addressed to these men (and I don't know if they are alive; all I know is that Himmler is dead) I must come to the conclusion that you are looking for a substitute guilty party.

Excerpt from Testimony of Ernst Kaltenbrunner, taken at Nurnberg, Germany, 18 October 1945, 1435–1715, by Lt. Col. Smith W. Brookhart, IGD. Also present: Capt. F. W. Frank, Interpreter; S/Sgt. H. Joyce, Reporter.

Absorption of the Abwehr into the RSHA

Q. Who directed the reorganization of Amt IV in 1944, after the RSHA had absorbed the Abwehr?

A. I should like to make a lengthy statement for your information. The Department Abwehr in the OKW was headed by Admiral Canaris. Hitler was dissatisfied with the activities of this department during a number of years. For which particular reasons I am unable to say. It is possible that Himmler carried out psychological preparations for Hitler, but I have reason to believe that the particular reason why Hitler wished to dissolve this department was because he had been inefficiently informed about two important military matters. He called Admiral Canaris the guilty party for this, and I thought he considered it improper procedure to have information obtained from a body of officers which was not altogether satisfactorily coordinated. Secondly, he ordered (I think it was in the middle of February 1944) that this department (OKW-Abwehr) was to be separated from the OKW and to be taken over by the Reichs Leader SS Himmler. He desired, in the first place, the creation of a coordinated German Intelligence Service. For this reason the Department OKW-Abwehr was divided into numerous departments. It was divided into: Department Intelligence-Defense; secondly, a Department of Active Intelligence; and lastly, a Department of Intelligence Proper. I have had the experience in London* that the German word Abwehr has a completely different meaning in the German language than that which you know. I do not know whether this is known here. OKW-Abwehr was a much larger conception than that you have of Abwehr. It meant not only Abwehr, but also Offensive Espionage and Intelligence on British questions. After this decision had been made by Hitler after lengthy negotiations with Himmler, and, I believe Keitel—whether Admiral Canaris was also present it is impossible for me to say—I was also called to the Fuehrer's headquarters one day, and told that I was to take over, by order of Himmler, the intelligence side.

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*Kaltenbrunner was interned and interrogated in England before his transfer to the Nurnberg prison.

Q. What was the date?

A. It must have been on the 18th or 20th of February 1944. Other functions of the Department OKW-Abwehr were given by Himmler to Mueller and Schellenberg. I do not believe that the negotiations, lasting for months and dealing with the dissolution of the OKW-Abwehr and the taking over of the entire department [Abwehr] and its personnel, were brought to a conclusion before the end of May or beginning of June. These negotiations were conducted, in the first place, by Schellenberg, and in the second place by Mueller. My personal feelings in the matter, if I may say this, are that a large percentage of this department [Abwehr] was actively involved in the events of 20 July. This feeling of mine was confirmed when I had heard statements from fellow detainees of mine in London. Something which, in spite of my repeated remonstrations, you have not so far believed, may in this manner become a little clearer to you. That is that the 20th of July brought about a considerable earthquake in the organizations of the Reich, and that Himmler became Chief of the German Reserve Army. Previously he had taken Department Abwehr away from the OKW; now he became Chief of the Reserve Army, and thus, the nerve center of militarization.

He also had some considerable interest in the matters of military intelligence, just as the Army had before, a function which the Army was reluctant to part with. This was the reason why he obviously had to retain the immensely important Amt VI /Mil.

Q. What did you have to do with the formation or organization of VI/Mil and the other changes which took place in 1944?

A. Nothing, insofar as I was still expecting that this department would introduce political reports into the masses of reports which previously went through channels reaching the OKW. The Department OKW-Abwehr received political information and intelligence, not only military intelligence. That was the original cause of the friction between Himmler and Canaris, and there was supposed to have been agreement in the past; quite a number of orders were received, according to which OKW was only to concern itself with military organization, and political matters were to go to Himmler's organization. But these, I believe, were never obeyed.

Excerpts from Testimony of Ernst Kaltenbrunner, taken at Nurnberg, Germany, 10 November 1945, 1430–1545, by Lt. Col. Smith W. Brookhart, IGD. Also present: John Albert, Interpreter; Frances Karr, Reporter.

Q. You are not asked to speak under oath. You understand that?

A. Yes.

Q. Referring again to the draft of a message found among your papers, just what did you do that caused this message to be written?

A. I do not think it is possible for me to prepare, at the same time, my defense counsel and the prosecution.

Q. Do you mean you want at this time to be with your counsel?

A. I would like to talk with my defense counsel about this piece of Kaltenbrunner writing before I make statements here. Apparently my statements yesterday were not believed here because I was interrogated on it yesterday.

Q. Well, you recall that we interrupted your interrogation to permit you to talk to counsel. We had not completed. However, it is your privilege to talk to your counsel and I would not infringe on that.

A. Now, I do not have any consultation with my lawyer at the moment.

Q. Well, I am not going to ask you any more questions about this document until you have had a chance to see him.

Treatment of Commandos and Airborne Troops

Q. When did you first have knowledge as to the order issued by Hitler, dated 18 October 1942, dealing with the treatment of commandos and airborne troops?

A. I do not know that order at all.

Q. Never heard of it?

A. No.

Q. I show you a photostatic copy of the original order (498–PS) and ask you to examine it, particularly to examine the signature and tell us what you know about it.

A. (Witness examines document.) The signature I identify as that of Adolf Hitler.

Q. Others have already identified it too. It seems to be well known. What else can you say about the order?

A. The order itself has not been known to me but I read something in the German press about this addition to the order of the armed forces, but I do not recall very much what provisions were made from the German side. I recall mainly the propagandistic evaluation of the brutal measures of the enemy.

Q. Well, if you will let yourself reflect, you will remember that is a basic order that was referred to right down through the war as the standard treatment for those kind of prisoners, and that it was carried into practice.

A. I do not know that it was executed. I had nothing to do with the treatment of war prisoners.

Q. If that is true, how do you explain your letter of 23 January 1945, which makes reference to the earlier order of 18 October 1942 (535–PS)?

A. (Witness examines document.) This letter cannot have originated with me.

Q. Isn't that your signature?

A. Yes, it certainly resembles my signature. I cannot recall that I ever signed such a letter.

Q. Well, the letter speaks for itself. It is not very old, it is only from January 1945. You have a pretty good memory on other matters. Think a little longer on it and tell us how it came up.

A. It certainly originated with Amt IV and I myself had never been in written communication with an office of the armed forces. Therefore, I do not believe that I signed this letter. Maybe a rubber stamp was used.

Q. Maybe anything. Why don't you tell us what you know about it instead of being so evasive?

A. I am not giving evasive answers. I just don't know anything about it.

Q. You don't know anything about the Fuehrer's order of 18 October 1942?

A. No. That which I have been shown before, no.

Q. You don't know anything about your conference with Warlimont on June 4, 1944?

A. No. About this I was interrogated by you in the other room before.

Q. That is correct and you denied the authenticity of the minutes which were made by Warlimont and it was on the same subject as this letter.

A. Yes.

Q. And now you say that this letter, although signed by you, was never seen by you and never known to you?

A. No. I never signed it.

Q. How do you expect any reasonable man to believe you in the face of this written evidence?

A. That I don't know. I hope that I will be believed because I will be able to prove in various other matters that I am telling the truth.

Q. I will prove in another matter that you have not been telling the truth.

A. I hope I will also be able to prove that Mr. Warlimont was not always used to telling the truth.

Kaltenbrunner Denies Observing Gassings at Mauthausen

Q. Let me refer to another little matter which has been the subject of considerable questioning. In your interrogation in London and here, both before other officers and myself, you have denied ever having visited a concentration camp, isn't that right?

A. Yes.

Q. Well now, in anticipation of what you can expect the prosecution to show, I will tell you that a very well known Gauleiter from Austria has testified and given an affidavit that he visited Mauthausen, in company with you and Himmler, in 1942.*

A. I can imagine why Gauleiter Eigruber said so.

Q. I didn't say it was Eigruber.

A. In his Gau the only concentration camp in Austria was located.

Q. That has nothing to do with the statement of facts that I have just made. The point is, you visited the camp which you consistently deny.

A. I have never visited it, neither with Himmler nor with Eigruber.

Q. Another witness will testify that you not only visited the camp, but you were seen going to the observation point, where the gas chamber was operated, while a gas operation was in progress in which human beings were gassed to death, and you were seen leaving that same point.**

A. I want to die on the spot if that is correct.

Shooting of Prisoners of War

Q. Don't you recall who had charge of the military administration in prisoner of war camps?

A. No.

Q. Do you know General Berger of the SS?

A. Yes, I knew him.

Q. You will recall General Berger had the administration of prisoner of war camps under the SS from 1 October 1944 to the end.

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*See document 3870–PS, Vol. VI, pp. 790, 795.

**See document 3846–PS, Vol. VI, pp. 783, 785; affidavit E, Vol. VIII, p. 630.

A. I think that is incorrect because the prisoner of war camps were not put under the SS but Himmler, as the Chief of the German Replacement Army, was put in charge of all matters concerning war prisoners.

Q. And in turn, General Berger of the SS, acting as Himmler's deputy by direct order of Hitler, was put in charge of the PW camps?

A. It is correct that Berger was the general deputy of Himmler because he was Chief of the SS Chief Office. That such an order was signed by Hitler, is unknown to me. But I know that Berger repeatedly represented Himmler in questions of war prisoners.

Q. How did that come to your attention?

A. One discussed such matters.

Q. Well, tell us about the procedure where, when prisoners escaped from prisoner of war camps, they were turned over to the Secret Police, and what was done with them thereafter.

A. They were not turned over to the Gestapo but were given back to the War Prisoners' Office.

Q. You remember the case of the 80 British flyers who escaped from Stalag Luft 3, that took place in March 1944?

A. That case is unknown to me.

Q. Don't you remember what Hitler said should have been done to these men?

A. No.

Q. Then some of the army officials said that they could not violate the Geneva convention?

A. No.

Q. But your police reported to General Keitel that 50 of them had already been shot?

A. No.

Q. Don't you remember the reports you got from the camp commander at Goerlitz?

A. No.

Q. I am sure that was an important enough event to come to your attention. They took them outside the camp to shoot them and then cremated them later.

A. You tell me things I do not know.

Q. General Westhoff attempted to find out from the Gestapo what had happened to these men.

A. If he had negotiations with the Gestapo he did not negotiate with me.

Q. Are you sure?

A. Yes.

Q. You deny knowledge of these 80 British flyers, British prisoners, having been captured and turned over to the State Police? What do you say about the general proposition that the escaped prisoners were turned over to the Gestapo?

A. Such cases are not known to me and in any case, it is incorrect. I would like to call your attention to the following fact. You talk now as if always war prisoners, who escaped and were recaptured, would be turned over to the Secret State Police. At another point you believe Herr Warlimont when this man says they were turned over to the SD. There is a discrepancy.

Q. You said that meeting never took place.

A. I only said now you believe Mr. Warlimont when he says—

Q. What I believe has no bearing on my question to you wherein I state a fact, as I am about to state, that over 600 American prisoners were found in a Gestapo concentration camp.

A. That I do not know. That only should have been done on order from Himmler to the Gestapo. I had nothing to do with such orders.

Treatment of Commandos and Airborne Troops

Q. Well, let us go back to the subject we took up earlier, before we got on the question of veracity. I showed you your letter of 23 January 1945 which makes reference to the earlier Hitler Order of 18 October 1942, as to how commandos were to be dealt with. Let me show you some other documents. The first two documents (540–PS) appear to be a draft followed by the letter that was signed. Those two are dated 30 January 1945 and 8 February 1945.

I will read this paragraph into the record: "On recommendation of the Chief of the Security Police and the Security Service (SD), the letter of 28 September 1944 is corrected as follows:

"The Fuehrer's Order on the elimination of terrorists and saboteurs in the occupied territories of 30 July 1944, as well as 18 August, 1944 (No. OKW/WEST/Qu2/Verw. 1 009169/44g/Kdes) refers only to non-German civilian persons in the occupied territories.

"For the treatment of commandos the Fuehrer's Order of 18 October 1942 (OKW/WEST Qu2/Verw. No. 003830/42 g.Kdes) is still valid."

"By direction—"

To which there is a reply, which contains this last paragraph:

"However, since the Security Service (SD) does not agree to this, a difference of opinion in this case appears to be immaterial. Earliest decision is requested since answer to SS General Doctor Kaltenbrunner is to be sent as soon as possible."

Now, do these communications serve to refresh your recollection any?

A. No.

Q. You still deny knowledge of the letter of 23 January 1945?

A. I do not recall the letter.

Q. And you deny knowledge of any subsequent action taken by the Commander of the Southeast?

A. Of course. Apart from the fact that this commander of the Southeast was not subordinated to me, he was subordinated to the armed forces commanders.

Q. We understand how the police operated in conjunction with the army. It was not necessarily a direct channel of command.

A. But this was a letter from the Supreme Commander of the armed forces to the Commander Southeast of the armed forces.

Q. That is clear from the document but it makes reference to the letter that has to be sent to you as soon as possible. And they even revised the draft, which is the first copy, to include the sentence referring to you in the signed copy, showing that he had knowledge of your letter and the action that was to be expected.

A. From that it can only be seen that the armed forces intended to write a letter to me. Whether rightly or wrongly and whether I was the right authority to write to, is open to question. In any case, the armed forces wanted to get in touch with the Gestapo, as can be seen from this exchange of letters and I am convinced that an officer of the Gestapo, namely that one memtioned on top of the letter, has written this document (pointing to 535–PS).

Q. Well, this is the letter that you know nothing about, but that nevertheless established just how you accomplished your desires by writing to the Supreme Command of the armed forces. That is very clear.

A. But I deny that I have written this letter.

Q. No, you just didn't know about it, but now you deny it?

A. I not only did not know the Hitler Order, but I also did not know this letter.

Q. But you acknowledge your signature?

A. I did not say that this is my signature, I only said that it resembles my signature and I also said it is possible that a rubber stamp, bearing my signature, was used. I cannot recall a letter of such contents, signed by myself.

Q. Would it be any more convincing to you if you saw the original letter, signed in ink?

A. I could be more convinced but it would still not prove that I signed in ink.

Q. There was only one Dr. Kaltenbrunner on 23 January 1945 who was chief of the Sicherheitspolizei?

A. But maybe this certain Ernst Kaltenbrunner was not in Berlin just at the time.

Q. Just answer my question first. Is that true?

A. Certainly.

Q. And you were the man?

A. No. I did not have the function which you imply this man had.

Q. I do not imply anything. I ask you if you are the man who held this position?

A. No.

Q. You are not the man?

A. There was no other Ernst Kaltenbrunner who was Chief of the Security Police. But this Ernst Kaltenbrunner, who sits opposite you and whom you call Chief of the Security Police and SD on January 23, did not write this letter. (To the Interpreter) I did not say this. I said this Ernst Kaltenbrunner, who sits opposite you, did not have the function of Chief of Security Police and SD on January 23, 1945.

Q. What was your function at that time?

A. As I described to you frequently, I was in charge of the Intelligence Service.

Q. You have, of course, denied responsibility for anything that was done in AmT IV and AmT V and AmT VI, except in a minor way in the latter case.

A. I denied any responsibility as to AmT VI, as far as AmT MIL was concerned. The reports on foreign policy, made by AmT VI, I partly used in my reports.

Q. The testimony of other witnesses, who served many years in the RSHA, is that you were, in fact, the Chief of the RSHA and that you exercised and executed control throughout the organization as you would have been expected to do.

A. That testimony is incorrect.

Q. And further, that during the period between Heydrich's death and your appointment to the Chief of RSHA, Amt Chiefs did deal directly with Himmler and that thereafter, everything cleared through you, with a few exceptions.

A. That testimony is also incorrect but I think it is also incorrect to use me for elaborating on the prosecutor's case against me.

Q. Well, this is for your benefit, unless you find this boring.

A. It is not boring to me. I have had the feeling in all my previous interrogations, that you are always looking for evidence of my guilt and that you are not taking into consideration any points which would be in my favor. I find myself now in the state of preparation for my defense and I do not find it appropriate that you continue to look for material which would incriminate me.

Q. Is your statement made in the form of an objection to further questioning?

A. In that sense as I stated it right now. If there is a possibility to be confronted with witnesses and do something about testimony in my favor, I would be very glad to continue. But even there, I have the feeling that it would be better to do this during the evidence at the trial itself. I believe I should discuss this first with my defense attorney.

Q. If there is any question in your mind about whether you should go further in any interrogation by the Office of United States Chief of Counsel, I think you should talk to your counsel too. You have never been under any compulsion to answer either before or since this indictment was served. I think you will agree your treatment has been fair in all the circumstances.

A. Yes.

Q. Do you now desire to see your defense counsel and then send a message through your guard, if you are willing to submit to further questioning?

A. Yes. I will do so.

Q. In view of a doubt in your mind as to whether you should go forward any further with these interrogations, we will suspend. I do want to point out, however, that confrontation with documentary evidence has, of course, worked both ways. It is to put you on notice of things that are evidence against you and at the same time, to give you an opportunity to explain, if there is any explanation. That will be all for now.

A. And after I have talked to my defense counsel on Monday I should report the result here, is that right?

Q. Only if you desire or are willing to be interrogated further by the Office of the United States Chief of Counsel.

VI. ALFRED ROSENBERG*

Excerpts from Testimony of Alfred Rosenberg taken at Nurnberg, Germany, 14 August 1945, by Col. John H. Amen, IGD. Also present: Col. Howard A. Brundage, JAGD; Lt. Col. Thomas S. Hinkel, IGD; Maj. Arne Brogger, FA, OUSCC representative in Norway; Mr. Thomas Dodd; Mr. Jens Hauge, Legal Secretary to the Norwegian Prime Minister; Mr. Helge Silvertsen and Mr. Ivar Follestad, representatives of Norwegian Government.

Nazi Dealings With Quisling

Q. What part did Quisling play in the military plans designed and carried out by this special staff?

A. When Quisling came to me in 1939 he came to me with his troubles dealing with the Norwegian situation. I, as a German citizen, believed it my duty to inform the Fuehrer about it. So did Raeder. Also, I seemed to think that the Fuehrer made it a point not to let Quisling know about the operation in advance.**

Q. From what did you gather that?

A. Because the Fuehrer at the time told me that this question was being dealt with by the OKW and he also told me not to contact anybody about this subject.

Q. Was the appointment of Quisling, on 9 April 1940, and of his Government in Norway, a part of the military plan?

A. Of course, Quisling made the political remarks that he would be the logical man to bring about the correct changes. With the beginning of the military operation, it was the Foreign Office which took charge of the political situation. I heard afterwards that Under-Secretary of State Habicht was in Oslo at the time and dealt with that question.

Q. What job was Quisling promised after the proposed German occupation of Norway?

A. As far as I know, Quisling himself felt to be the Prime Minister and I also believe that he felt himself able to bring about changes in Norway by himself.

Q. I don't care what Quisling thought. I want to know what you and the Fuehrer planned about this matter.

A. I do not believe that the Fuehrer made any sort of promises to Quisling.

Q. What about you?

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*See also document 3719-PS, Vol. VI, p. 436.

**See document 004–PS, Vol. III, p. 19.

A. In this case, I of course thought that it would be the correct thing for him to be the Prime Minister.

Q. Did you not indicate that to him?

A. I believed that to be the case. I cannot, however, speak to him about any position which might be given out in the future. When Quisling was ousted, a new Reich Commissioner, Terboven, was put in.

Q. I don't believe you have been telling the truth at all about the negotiations between yourself and Quisling and the Fuehrer concerning this Norway situation. It is impossible for you to have occupied the position which you had in the negotiations and still not know, for example, what Quisling was to get out of this arrangement. We don't want you to waste our time this way. You have already stated that you thought of Quisling as becoming Prime Minister. Is that correct?

A. Yes.

Q. Did you not convey that thought to Quisling? Yes or no.

A. It is possible that it was talked about.

Q. Anything is possible, and I don't want to hear about its being possible. I want to know whether actually you didn't convey that impression to Quisling.

A. I conveyed that thought myself, and I of course accepted it as a fact.

Q. In other words, you encouraged that thought, did you not?

A. He did not need any help for that purpose.

Q. Did you discourage it? Yes or no.

A. No.

Q. Did you not also convey the same thought to the Fuehrer?

A. As far as I can say now, I never talked to the Fuehrer about later possibilities in any stable form.

Q. Is it not a fact that Quisling was led to believe that he was to become Prime Minister?

A. To the best of my knowledge, Quisling was to bring about a change in Norway with more or less help from Germany. He conveyed the thought that he would be the Prime Minister of Norway. To my knowledge the Fuehrer could not have made him any promises because otherwise the newly formed Quisling cabinet in Norway would not have been ousted by the German Government.

Q. But the Fuehrer could have been of some assistance in that respect, could he not?

A. I believe in this case the Fuehrer was holding back very much.

Q. Would it not be fair to say that Quisling, as a result of the conversations which he had with you and with the Fuehrer, believed that he was to receive a reward in the shape of becoming the Prime Minister?

A. This seems believable to me.

Q. It is apparent, is it not, that you were working out plans with Quisling for the taking over of Norway?

A. The reason for Quisling's coming to Germany was brought about by a fear that in any event of change, the northern part of Norway might be occupied by Russia via Finland, and the southern part by the Western allies. This seemed to be sound reasoning to me, and therefore I hoped Germany would help him. I also will state that Quisling hoped to work together with the King.

Q. But how about these people that you were planning to put into certain positions?

A. Quisling was evidently thinking of putting his own men, men like Hagelin, into responsible government positions.

Q. You knew that, didn't you?

A. I did not know very many Norwegian people.

Q. Were you trying to help Quisling in his effort to put his people into these positions before the operation had been completed?

A. Quisling mentioned several names, but my knowledge of Norwegians was limited, until 1939, to Quisling and several Norwegian writers.

Q. Did you not report to the Fuehrer the plans which you were making with Quisling for the taking over of Norway?

A. Quisling had a fantastic plan for the seizing of Norway. He was to bring Norwegians to Germany for training purposes and use these troops later on. It is possible that I told the Fuehrer and also Goering about these plans. Probably we listened attentively to these plans. If they were of consequence for the operation, I don't know.

Q. It is not only possible, but it is a fact, is it not, that you discussed it with Hitler and Goering?

A. The Fuehrer told me that he always had intended to keep a neutrality between Germany and the Scandinavian countries. After the facts disclosed by Quisling to me and transmitted by me to the Fuehrer were so evident and concrete, that the Fuehrer saw himself forced to act accordingly. After the Norwegian campaign the Fuehrer told me of German navy ships coming in contact with British naval craft at Trondheim.

Q. How many troops and how many people were going to be brought into Germany by Quisling?

A. I cannot recall the amount of people. I only know that he wanted to bring some male admirers of his into Germany.

Q. You know that he proposed to have troops in Germany, don't you?

A. Yes. That he wanted to train his Norwegian followers.

Q. For what purpose?

A. To help him secure a change of government in Norway.

Q. But you do recall that you had worked out plans with Quisling for taking over Norway, all of which plans were from time to time reported to the Fuehrer and received his approval; and with Goering also.

A. The messages were given by Staff Leader Schickedanz to State Secretary Koerner and he was asked to submit all the messages to Goering. If Goering was widely interested in all this, I do not know. Of course, according to my duties, I kept the Fuehrer informed on all these situations.

Q. Why was Quisling dismissed on 13 April 1940 as head of the Norwegian Government, to which he had been appointed on 9 April?

A. This is not known to me because of that fact that at the moment of military operations, the Foreign Office took charge of all Government matters.

Q. Did you not discuss it with representatives of the Foreign Office, or with the Fuehrer, or with Goering?

A. Of course, I kept the Fuehrer instructed on all matters which were brought to my attention.

Q. Is it not a fact that Quisling was ousted later because he didn't deliver Norway to a peaceful state after the German invasion?

A. Do you mean by this question that—

Q. I mean that Quisling failed to carry out his part of the bargain. Isn't that so?

A. That I don't know. I had absolutely nothing to do with the ousting of Quisling.

Q. But didn't you hear about it?

A. No.

Q. Nothing?

A. No.

Q. I don't believe it.

A. I was very much disappointed when I heard about the later developments.

Q. It is inconceivable that you don't know more about it than you are stating.

A. I want to mention that I did not even know and was not informed that a Reich Commissioner was put into power in Norway, and I was only informed about it when I came back from travels.

Q. Didn't Terboven oppose Quisling because of his failure to deliver on his part of the bargain?

A. Which bargain?

Q. The bargain that we have been talking about. The arrangements between Germany and Quisling.

A. Quisling made only the reports to him, and he reported to the Fuehrer.

Q. What was your policy toward Quisling after April 1940?

A. Quisling paid me a visit in Berlin which was quite unofficial because I was forbidden to mix into any business affairs concerning Norway, because a Reich Commissioner had been appointed.

Q. What was the conversation at the informal visit?

A. Quisling complained about the Reich Commissioner Terboven.

Q. What was the complaint?

A. He told me that Terboven was not familiar with the Norwegian mentality and that he had several incapable assistants.

Q. What else was talked about between you?

A. This visit occurred at the time when Quisling was restored to his position as Prime Minister.

Q. What was the approximate date?

A. I cannot recall it, but the date may be established out of any newspaper.

Q. What did you say to him?

A. I told him that I agreed in some ways with him, but that he had to go the official way through the Foreign Office, or to the Fuehrer directly. Not the Foreign Office, but the Chief of the Reich Chancellory, Dr. Lammers.

Q. Were you present at any conversations subsequent to April 1940 between the Fuehrer and Quisling?

A. I never attended any discussions between the Fuehrer and Quisling.

Q. Did Quisling ever tell you that if a peace was concluded by the German Government with his Government, that he would see to it that a number of Norwegian divisions be furnished the German Government for its operations?

A. I have to say that I cannot recall. As far as I recall it, things did not go that far at the time. Quisling had the wish that Germany establish a peace with Norway and that a Norwegian Ministry be established in Berlin.

Q. Did not Quisling propose to overcome Norwegian resistance by any means possible?

A. I cannot recall that this was being discussed. Of course, he was very confident and hopeful to get German assistance.

Q. You don't deny, do you, that it was being discussed?

A. According to the Denkschrift (memorial) which was brought to my attention a little while ago, Quisling was confident to get the German Government's assistance after his establishment in Norway.

Q. That was the whole plan, was it not? Yes or no.

A. This was Quisling's plan, which was brought to our attention.

Q. And in which you cooperated?

A. Due to Quisling's fears, meaning now the occupation of Norway by Russia and the Allies, I saw myself compelled to talk to the Fuehrer about it.

Q. And you did, didn't you?

A. I very seldom talked to the Fuehrer. Most of our business was transacted in writing.

Q. I didn't say seldom or often. I said you did on this occasion, did you not?

A. Hitler's disposition on all military matters and the fact if he agreed to Quisling's plan or not, I don't know.

Q. You found out eventually, didn't you?

A. I got the news out of the newspaper that Norway was being invaded.

Q. What suggestions did Quisling make as to the number of German troops necessary for the carrying out of plans for the invasion of Norway?

A. I do not know if he had any intentions of making a major operation, the way Hitler brought it about. If there were any military discussions on this subject, they were without my knowledge.

Testimony of Alfred Rosenberg, taken at Nurnberg, Germany, 24 September 1945, 1430–1530, by Lt. Col. Thomas A. Hinkel, IGD. Also present: Pfc. Richard W. Sonnenfeldt, Interpreter; Pvt. Clair Van Vleck, Court Reporter.

Origin and Activities of the Hohe Schule

Q. At one of the previous meetings, you stated that one of the previous positions you held was with reference to the development of the Hohe Schule; is that correct?

A. Yes.

Q. Just exactly what was this school intended to mean?

A. It has been found necessary in the general educational program of the Party to establish a school which would be for further education outside of the daily politics and pamphlets which were issued. Several offices intimated that they had the wish to establish such a school, and it was then established.

Q. By whose order was it established?

A. The Fuehrer empowered me, by decree, to make the necessary preparations even during the war, although this was in small measure.

Q. Actually, this school had been started prior to the commencement of the war, had it not?

A. Thoughts for the founding of such an institute had been expressed for a long time. However, the first decree to establish such a school was only issued in 1941.

Q. Isn't it a fact that as early as 1938, this school had been contemplated?

A. Yes, although the wish for such a central school of research had been discussed for many years.

Q. Isn't it true that even the name had been given it as early as 1938?

A. There had been many suggestions as to the name of the school, among others there were Hohe Schule or Central Academy, and then at the suggestion of Dr. Ley in 1941, the Fuehrer chose this name.

Q. From where was it expected that the material used in this school would be obtained?

A. I founded several smaller institutes of research in preparation for this school. Then we also bought a number of scientific libraries in the Reich, and also scientific books abroad, from, among others, Denmark.

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*The Hohe Schule was originally designed to become the center for Nazi ideological and educational research. See document 136–PS, vol. III, p. 184. It soon developed, however, into a project for the seizure of cultural treasures, and became known as the Einsatzstab Rosenberg. See document 141–PS, vol. III, p. 188.

Q. Where else did you expect to get materials for this school?

A. In 1940, it was learned that several Jewish institutions had collapsed in Paris, and when it became evidenced that these Jews would not return, I got permission to collect several scientific libraries from these sources.

Q. From whom did you get that permission?

A. From the Fuehrer.

Q. Did you inform him of the fact that these libraries were available?

A. A suggestion as to this came from many sides, also as to objects of art which had been left. Part of these came from one of my assistants, part of it from people from the Luftwaffe and also, I think, from the press.

Q. Were these suggestions made to you and in turn you made them to the Fuehrer, or were the suggestions made directly to the Fuehrer?

A. I don't remember exactly. So far as I know, some of my assistants talked with people in the Party Chancellory, and also with people of the Luftwaffe and then I got this mission.

Q. Did you inform the Fuehrer of the availability of this material and ask his permission to obtain it for the Hohe Schule?

A. As I explained, my assistants got in touch with people from the Party Chancellory, and then, as far as I know, this was reported to Hitler. So far as I know, I did not talk with him personally about it but I only got permission to get these things.

Q. You were interested, prior to 1940, in obtaining material for this school, were you not?

A. Yes, I had interest in getting material for research when the thing became acute.

Q. You had, as a matter of fact, also obtained materials for this school; isn't that right?

A. You mean before it was actually founded?

Q. Yes.

A. The materials were secured anyway for further research work; then later they were in turn secured by the central library for the Hohe Schule for further research work.

Q. That was under your direction, wasn't it?

A. Yes.

Q. Weren't large amounts of material for use by the school obtained through the confiscation of Jewish property in Germany?

A. As far as I know, I received little or nothing from that source. The confiscation was executed by the police, and, so far as I know, they kept the material.

Q. Do you remember having any communications with Bormann regarding the obtaining of materials for these schools?

A. I would like to make an addition to a question, which I was asked before, when I was asked whether I had received any materials from confiscated property in Germany. I did not receive any for the Hohe Schule, but long before that, in 1933, when a great number of communistic libraries were confiscated, I did take quite a number of copies for my Party office then.

Q. Didn't you later transfer this material to the school?

A. I don't think so. I believe it remained in the indoctrination office, which I maintained.

Q. From whom did you obtain this confiscated literature to which you have just referred?

A. This material was stored in police warehouses and several of my acquaintances went through it and selected whatever they wanted as correct historic literature of this period.

Q. Didn't you suggest to the Fuehrer that Communist libraries should be seized and liquidated?

A. This was an action executed by the State with the Police and the Propaganda Ministry. So far as I know, I never made any suggestions regarding this matter to the Fuehrer, but after I heard about it, I then requested material for my indoctrination work.

Q. What was your opinion with regard to the confiscation of private libraries in order to benefit the Hohe Schule?

A. You mean from abroad?

Q. Anywhere.

A. This was an action decreed by the State against institutions that were in opposition to the state or against individuals who were politically in opposition to the state.

Q. Did you suggest to the Fuehrer, that you be appointed as the person to collect the objects of a cultural, or a scientific nature, in the various occupied countries?

A. As I said before, this was discussed in several conferences, and then he finally appointed me. Here is something about the confiscation of materials from institutes and societies, also objects of art value; it was in the first place a removal of these objects to security. The Fuehrer wished to decide himself later on what was to be done with them.

Q. I show you a letter dated 18 June 1940, addressed to Reichsleiter Martin Bormann, and ask you if you didn't send that letter to Bormann. For the record, the file is 067–PS.

A. Yes, this certainly must be a letter of mine.

Q. Is it, or is it not?

A. Yes, I remember I wrote something like that.

Q. Whose initials appear on the first page thereof?

A. I don't know. It appears to be an "H". It may be "H.H.".

Q. In any event, you don't know whose initials they are?

A. No, I don't know.

Q. I invite your attention to part three of that letter. I invite your attention, furthermore, to the first paragraph thereof. Have you read it?

A. Yes.

Q. What was your thought with regard to private collections as set forth in that letter?

A. The thought was that such collections usually contained details of particular interest for historical research, which were not always evident from the usual sources. I wish to admit here at this time that this third part is a little exuberant, or going over the limit.

Q. In what way do you think that it was over the limit?

A. Speaking of Canterbury was exuberant.

Q. What about your reference to the private collections, was that exuberant too?

A. I want to say here that research into private libraries is always of interest. Yet, however, a confiscation of them is not necessarily connected with that.

Q. You state in the letter about confiscations, don't you?

A. Yes. However, the confiscation is a little different from "taking it away". This still leaves open the possibility of returning it.

Q. There is always a possibility, is that the answer?

A. Yes.

Q. I invite your attention to the third paragraph of part three. Is that the paragraph in which you suggested the formation of the Einsatzstab Rosenberg?

A. I don't know whether the Einsatzstab was founded on the 18th of June 1942. I don't even know whether it was discussed at this time. This was merely a personal suggestion in this letter.

Q. Isn't the suggestion to the effect, that you have a personal representative in order to pick up these materials we have been discussing?

A. I made the suggestion to send somebody there to examine the materials, and also to do some research on them.

Q. When was the Einsatzstab Rosenberg founded?

A. When did the German troops march into France?

Q. In May 1940.

A. Several of my assistants went to Paris and also there was the Luftwaffe, which had occupied several castles, and they made reports about treasures of art, which had been left behind. Then the Fuehrer decreed that the Einsatzstab was to be founded later on to handle these things.

Excerpts from Testimony of Alfred Rosenberg, taken at Nurnberg, Germany, 25 September 1945, 1415–1630, by Lt. Col. Thomas S. Hinkel, IGD. Also present: Bernard Reymon, Interpreter; Pvt. Clair Van Vleck, Court Reporter.

Looting of Libraries and Art by Einsatzstab Rosenberg

Q. Do you recall any further correspondence with Bormann regarding the acquisition of materials from libraries and archives?

A. It is possible that I did correspond with the man, but I don't remember it.

Q. As a matter of fact, with reference to the statement that you have just made regarding private property, you wrote to Bormann on 1 July 1940 along that line, did you not?

A. I can't remember that.

Q. Didn't you set forth some theory, by which it could be justified, in the case of the French masonic lodges?

A. We had assumed that those great masonic lodges in Paris had carried on an anti-German policy for years. I, as a matter of course, wanted to find out from the libraries whether I could find confirmation or otherwise of the opinion which we had been holding on that subject.

Q. You advocated a confiscation of those libraries, didn't you?

A. Yes; a confiscation of such libraries.

Q. What was the principle on which you believed it justifiable to confiscate those libraries?

A. I didn't consider that as an ordinary private French property, but as the property of an organization, into the activity of which I wanted to go.

Q. What was the basis on which you made this differentiation between property of this organization and any other private property?

A. I told myself that it was actually a fighting organization, directed for some time against the German Reich.

Q. In other words, you convinced yourself that it was all right; is that it?

A. It so happened that some material was of interest to the police, and had been confiscated by the police. I only got hold of such material as was necessary for my research, to get the precise picture of their activities.

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* Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. The fact of the matter is, is it not, that at least some of the materials in these masonic lodge libraries was confiscated for your purposes?

A. Yes.

Q. I show you a letter dated 1 July 1940, addressed to Reichsleiter Bormann, and ask you if you didn't send this letter to Bormann. The document is identified, for the record, as 065–PS.

A. This corresponds with what I have told you.

Q. Did you write that letter?

A. Yes; I certainly have written it.

Q. In fact, were the available books and the historical archives of the Paris masonic lodges given to the Hohe Schule?

A. They arrived at Frankfurt and we set them up separately with other libraries. On account of the air raids, those libraries had been transferred to Schloss-Hungen, a fact which I disclosed at Mondorf.* It is possible that on account of the transportation, those libraries are no longer in the state in which I had them set up.

Q. The transfer of these materials resulted from this letter; is that correct?

A. Yes.

Q. Did you receive a communication from Bormann in response to the one that I have just shown you?

A. It happened on the strength of power which I received subsequently. I did not do it that time on my own initiative. To this effect, the Einsatzstab had been created.

Q. When was the Einsatzstab Rosenberg created?

A. Some time after this communication.

Q. When?

A. I don't remember the date.

Q. Approximately the date?

A. It may have been the end of June or in July.

Q. In 1940?

A. Yes.

Q. This letter is dated 1 July 1940, so the organization probably was in existence at that time, was it not?

A. Some time. I can't remember the date. After this letter the question has been discussed and then I received the mission from the Fuehrer.

Q. What was the mission you received from the Fuehrer?

A. I received the mission to confiscate Jewish and other libraries, which were to be considered as hostile and for a purpose of scientific research. In conjunction therewith, I also received the mission to safeguard the works of art, which had been left in the houses and castles.

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*See footnote, p. 1193 of this volume.

Q. Did you establish an organization to carry out this mission?

A. There was in Paris a representation of this Einsatzstab. They visited the various organizations and the various castles where those works of art existed. There a brief outline of them was made. They were packed up and forwarded to Germany. All things concerned with the free masons and Jews were forwarded to Frankfort-on-Main.

Q. What was your relation, or the relation of the Einsatzstab Rosenberg to Goering's art collecting activities?

A. At the beginning those were two separate things. At the outset I was to safeguard all those objects of art collected. At the first transportation, Goering safeguarded—I say safeguarded for himself—a certain portion of these collections. I instructed my man in charge of it to put down the things taken by Goering. When Goering was advised by the fliers who had been billeted in those various apartments and castles, that objects of art were there, then he also got hold of those collections. All these objects of art, and there was much more of them than I had anticipated, were put down in a catalog and then forwarded to Neu-Schwanstein. As that place was not found quite air-raid proof, those art collections, on the order of the Fuehrer, were sheltered in a dry mine located in Austria. All these objects of art were put down very carefully in the catalog with the precise designation of the owner. I forbade, in a very strict manner, all of my collaborators to appropriate even a trifle object as a souvenir, or even to acquire them in France against a certain payment as I found out had happened several times. On my first interrogation at Mondorf, I already have given all these particulars.

Q. What was the relation between the Einsatzstab Rosenberg and the military?

A. Inasmuch as the Einsatzstab was functioning in occupied territories, both in the West and in the East, it had been agreed upon that they were to be considered as Wehrmachtsgefolge, which means being a part of the Wehrmacht. It means that they are attached to the Army and that the Army takes care of them.

Q. Between whom was this agreed?

A. Between the representative of my Einsatzstab and the representative of the OKW.

Q. During the course of your statement, you have used the term "safeguarding". What do you mean by that?

A. I mean to say to put them in safety, in custody.

Q. Why was it necessary to remove them from the places in which they were found?

A. There were several points of view in this case. In the first place, those objects of art were left without any guard in those various castles, which were intermittently occupied by various military people, coming and going. In the second place, with the development of the air warfare, there was the possibility of such places, where the art treasures were, being demolished by the raids. In the third place, I must mention it, this is also in connection with the various Jewish fighting organizations and individuals. It was agreed that all of these properties were to be put eventually at the exclusive disposal of the Fuehrer himself, who would deal with them as he saw fit.

Q. Are you sure about the last statement that you made about the disposal of the Fuehrer of all these art objects?

A. The Fuehrer later on told me that none of these objects of art should be withdrawn or should be lent or given to anybody, not even for scientific or research purposes.

Q. Isn't it a fact that Hitler wasn't the only art collector in Germany and that not everything was reserved for him?

A. That is correct.

Q. Who else collected art?

A. I could only guarantee the safety of those objects of art, which were under the supervision of my confidential man, who was quite a trustworthy person. My confidential man was Robert Scholtz. He informed me once of a case where a Jewish collection had been seized, but at that time not by the Einsatzstab Rosenberg, and at that time the French government expressed a desire to have a priority to acquire that collection.

Q. When you say "he", to whom do you refer?

A. Robert Scholtz.

Q. Who was Robert Scholtz?

A. He was my art expert.

Q. Who besides Hitler was collecting art in Germany and in the occupied territories?

A. I can't say the particulars. Goering had his big collection.

Q. And you had a pretty good collection too, didn't you, at the Hohe Schule?

A. Of objects of art?

Q. Objects of historical or research interest, which could also be considered art objects.

A. Under objects of art, I understand paintings, old furniture, sculpture, and tapestry.

Q. What did you have at the Hohe Schule?

A. At the Hohe Schule I had all the works concerning the question of Jews and Free Masons. The other books, not dealing with either the Jews or Free Masonry, but also of scientific value, were transferred to the library of the Hohe Schule at Tanzenborg near Klagenfurth.

Q. Did there come a time when a collection was made at the Louvre at Paris of these various objects which had been collected from various places throughout France?

A. Not at the Louvre itself, but in what is called the Jeu de Paume. There they had been transferred in order to make a careful inventory and then to be packed and to be forwarded.

Q. To be distributed; is that not correct?

A. No. As far as my department is concerned, those objects were shipped to Robert Scholtz, who transferred them to Neu-Schwanstein.

Q. You don't deny, do you, that the document that you have identified as having been received by you, [141–PS] mentions art objects, with reference to what you were to receive?

A. Yes; I admit that.

Q. What happened to the materials that you gathered, not only in connection with this order, but in connection with paragraph 6 therein, that refers to the "further securing of Jewish art property in France will be continued"? What happened to that property after it was secured?

A. Well, if I remember, there seems to be confusion in this. It was provided that all the further art treasures and collections should go through my Einsatzstab in collaboration with the Militaerbefehlshaber. So that the whole thing should be closely followed up by my own collaborators.

Q. When were you appointed by the Fuehrer to collect these various research materials, library materials, and other materials that you have discussed, in the Eastern occupied territories?

A. Well, this function was enlarged, extended after the war was declared, to the Soviet Union.

Q. In other words, you just operated this organization in the West until some time after the territories were occupied in the East; is that correct?

A. Well, I pursued my activity in the West, and when the war started in the East, similar problems came up in the East where there were a certain number of Communistic libraries, and besides there were certain art treasures which we wanted to put in safety. There was a certain number of Communistic libraries confiscated and carried to Ratibor.

Q. In your activities in the West, isn't it true that you collected, through the Einsatzstab Rosenberg, more than just books and pamphlets, as you have so far admitted collecting?

A. Well, books, objects of art, writings.

Q. You took everything that had a cultural value; isn't that correct?

A. Yes; everything that had a scientific value.

Q. Not only scientific, but cultural.

A. Yes.

Q. Such as paintings, statuary, tapestry, furniture, ceramics, pottery; anything that had a value along the artistic line?

A. Yes; that much I have said.

Q. That was all transported by you, or your organization, to Germany.

A. Yes.

Q. There a distribution was made, was it not?

A. Of objects of art?

Q. I am speaking now of all the materials you collected, including the books and pamphlets and the objects of art.

A. It was not distributed. All those objects of art and ceramics and tapestry, all these things had been put down in a catalog by Scholtz. They all must have been found by the American troops in the mines.

Q. Did you ever discuss with Hitler his idea of establishing an art museum to the memory of his mother?

A. To his mother? Hitler had ordered, quite a time ago, from Italy, and elsewhere, objects of art for a museum which he desired to establish near Linz. Now, I don't know whether that museum was to be dedicated to his mother.

Q. Weren't these objects of art, that you were collecting, intended for that museum?

A. No. I only collected them with a view of making a very careful list and to keep them very carefully in custody.

Q. What did Hitler intend to do with them?

A. He didn't tell me anything about them.

Q. You had numerous discussions with Hitler, did you not, as to the disposition to be made? Didn't you make reports to him of the objects which had been acquired?

A. I sent him a photographic reproduction of the most outstanding objects of art.

Q. What did he tell you after you reported to him on these outstanding pieces of art which had been acquired?

A. In the evenings after his military discussions, he used to look at those pictures. It was a relaxation for him.

Q. What did he tell you as to what he intended to do with those pieces of art?

A. He didn't tell me anything about it. He told me simply that those pieces of art, which I had sent through Scholtz, should be kept at his disposal. I overheard once a conversation at the headquarters of Hitler. He was addressing several gentlemen and showing them the reproduction of some exceptionally beautiful pieces of art. He made a comment to the effect that he realized France's desire to come again into possession of such objects of art.

Q. You are not serious in your suggestion that this art was ever going to be returned to these countries, are you?

A. In a certain measure, it certainly was provided for that.

Q. What do you mean by "in a certain measure"?

A. I mean there were a certain number of pieces, which Hitler thought of particular value to France; again there was a certain number of things which were of particular interest to Germany. Certainly Hitler thought that later on he would take it up with France.

Q. How do you know all that? I thought you never discussed these things with Hitler.

A. This I assume.

Q. You know perfectly well that you had numerous discussions with Hitler regarding the disposition of this art, and that disposition didn't contemplate returning most of it, or even a substantial part of it, to the places, from which it had been taken; isn't that right?

A. The Fuehrer had to attend to it later on. I only received the mission to get hold of those things.

Q. Yes, but you knew what he intended to do, didn't you?

A. I did not know it exactly.

Q. But you knew it substantially. You knew he was going to increase his museum at Linz, didn't you?

A. Well, for that museum he had made acquisitions for numerous years.

Q. Yes; and he wanted other acquisitions there; is that right?

A. Yes; most certainly he did.

Q. There were German art museums that were going to be enriched by these pieces too, weren't there?

A. To handle those questions, he reserved the right for himself.

Q. Maybe, but he discussed it with you, didn't he?

A. I saw so little of the Fuehrer during those war years—

Q. Never mind about that; just answer my question. He did discuss it with you, didn't he?

A. He did not discuss with me what he was going to do with all those pieces of art.

Q. But you knew what he was going to do with them, didn't you?

A. I assume it myself that he wished that a large portion of it remain in Germany. Again from other conversations, I surmised that such objects, which were important from the point of view of French culture, he might possibly return them to France.

Q. Did it ever occur to you that keeping those objects, which he planned to keep for Germany, might be illegal?

A. Well, that topic, he was to take up eventually with the French authorities.

Q. How do you know that?

A. Well, I assume that much on my own.

Q. You seem to have assumed an awful lot about this art that you were collecting in such large amounts; isn't that right?

A. I had no right of disposal over them.

Q. What about the materials that you transferred to your school?

A. The books, in the very first place, I wanted to keep them in Germany for research.

Q. Did it ever occur to you that it might be illegal to keep those books?

A. Well, the legal forms would have to be taken care of eventually after the war.

Q. How do you know that?

A. I don't know it, but it might have happened.

Q. Anything might happen. The fact of the matter is when they were taken, the laws were not passed, and the compensation was not paid; isn't that right?

A. The owners were all away.

Q. I show you a document dated 1 March 1942, signed by Hitler, and ask you if you ever saw that before? For the record, that is identified as 149–PS.

A. That is correct.

Q. You have seen that?

A. Yes.

Q. According to the terms of that order, you were appointed, were you not, to act in cooperation with the chief of the OKW to seize materials of various kinds in the occupied territories?

A. To confiscate, yes. These are the full powers which were subsequently completed. I already mentioned to you that an extension of powers were given when war was declared in the East.

Q. I invite your attention to the last sentence of that order, wherein it is provided that the regulation applying to cultural treasures, which are the property or in the possession of Jews, which are ownerless, or the origin of which cannot be clearly established, are to be seized. Is that the practice under which you had beeen operating in the Western territories?

A. In the East we had not to confiscate any Jewish property.

Q. What about the West?

A. I don't understand your question.

Q. I say, what was the rule under which you were operating in the West? Is it the same as was stated in the last sentence of the order you have before you?

A. In the West I used to operate according to the principles of paragraph 2.

Q. That is, that property which belonged to Jews, which was ownerless, or the origin of which could not be clearly established, was taken away by your organization; is that right?

A. Yes. They were being confiscated and shipped to Germany.

Q. By what authority was that being done?

A. Well, the Fuehrer had already explained that the group in question was to be considered by us as a fighting organization, which had been waging a struggle against Germany already for some time.

Q. The owners of ownerless property, or the property, the ownership of which could not be established, were those people included in that group?

A. Yes; they were included in that group.

Q. How do you know that?

A. Those German emigrants which had gone abroad had a very large backing on the part of the Dutch and French Jewry. Those political refugees not only did enjoy the political hospitality, which would be a natural thing, but they were backed financially to publish their papers. They had been financed and backed by the whole Jewry of those countries.

Q. What difference did that make? It was still private property, was it not?

A. In that sense it is no longer property of French or Dutch citizens, but property of a certain hostile fighting organization.

Q. That is your conception; is that it?

A. That was my conception.

Q. That was the conception under which your organization operated; is that correct?

A. Yes.

Q. What about this property which was considered ownerless, or the origin of which could not be clearly established? How did you justify your taking that?

A. Well, that must have been the case of things which belonged to people, or to a person who had left, and we wanted to safeguard it from further depredations.

Q. What do you mean by further depredations?

A. I already mentioned several of those empty houses that were variously occupied or billeted.

Q. Why was it necessary, if your only thought was to safeguard this material, to move it from the countries in which it was found, to the Reich?

A. Well, that was in conjunction with the whole matter of putting things in custody.

Q. You couldn't have put them in custody in the places in which they were found; is that right?

A. I cannot on the spur of the moment judge it. As I already mentioned before, the French government itself subsequently set up a commissar in charge of those collections and, eventually, they bought up a certain portion of it, leaving to the Fuehrer the second right, or right after priority, to make the acquisition.

Q. With respect to the property of Jews, you were concerned not only with cultural objects and objects of scientific research, but you were concerned with things as prosaic as household furniture; isn't that correct?

A. Yes. That came up later on. At the outset, that was not considered at all. Subsequently there were two viewpoints: in the first place, in the Eastern occupied territories, there were houses which were completely empty, where you had to simply sit on the floor. Immediately afterwards another viewpoint came up and that was regarding the bombardment of German towns. Then the idea came up that that Jewish furniture and household articles may be used for the German women and children who had been bombarded.

Q. It resolved itself into a simple question of taking it away from the Jews and giving it to other people; isn't that right?

A. The corresponding furniture and household articles were sent by train to the corresponding Gaus.

Q. That doesn't answer my question. My question is: it was merely a question of taking it away from the Jews and giving it to the other people; is that right?

A. Yes; in this case it is quite clear, obviously.

Q. This was done in the occupied territories, both West and East; isn't that correct?

A. Only in the West.

Q. Only in the West?

A. And in the East there was nothing.

Q. Did you raise any objections to this kind of procedure?

A. I had no objection against it.

Q. As a matter of fact, you agreed with it, didn't you?

A. Yes.

Q. There wasn't any question of safeguarding this kind of material, was there?

A. No. In this case it was simply compensation for hundreds of thousands of women and children who, in the course of a night, had lost their shelter. Shall I say how it was being done?

Q. No. By what means was the furniture seizure from the Jews carried on?

A. The man, the Paris Dienstelle, had that furniture removed, with the help of French workmen, and then they were brought and centralized to a certain place and from there they were shipped to Germany, into the bombed areas.

Q. With reference to France, how do you account for the fact that these furniture seizures were made after the armistice was signed, the terms of which did not contemplate such seizures?

A. Right at this moment I cannot give you a definite answer. I will answer the question. I received a mission from the Fuehrer, and while I was well aware that it was something quite exceptional, and against the law, and again was aware that it was not a case where confiscation had been made with the provision of the possible return, yet, the situation in Germany was so terrible that—

Q. In other words, you didn't concern yourself with its legal aspects; is that it?

A. I admit that in this case I didn't construe it very well.

Q. Do you recall ever making a statement in words, or in substance, that an armistice may have been concluded with the French, but the war against the Jews continued?

A. I don't remember. Was it in a conversation? I don't know.

Q. You just don't remember at this point; is that correct? You may have said it?

A. Yes. Each beneficiary of that furniture had to make a certain provision with the Finance Ministry. A certain fund was instituted with the Finance Ministry, which might have been called upon subsequently for a possible compensation.

Q. Anything might have been. For what was the fund used? Do you know?

A. I can't say.

Testimony of Alfred Rosenberg, taken at Nurnberg, Germany, on 29 September 1945, 1022–1152, by Lt. Col. Thomas A. Hinkel, IGD. Also present: Bernard Reymon, Interpreter; S/Sgt. William A. Weigel, Court Reporter.

Reason for Harsh Treatment of Eastern Peoples

Q. Why were the occupied countries of the West treated differently from the occupied countries of the East?

A. Because those whom we considered as our adversaries or opponents from the point of view of our conception of the world are different in the West from what they are in the East. In the West there were certain Jewish organizations and Masonic lodges, and in the East there was nothing more than the Communist Party.

Q. Well, I am not speaking now so much with reference to organizations, but to racial groups. Why was the treatment accorded the racial groups in the East different from that accorded the racial groups in the West?

A. I don't understand your question.

Q. Well, the question is very simple. You know and I know that the treatment accorded the peoples of the eastern occupied territories was quite different from that accorded the peoples of the Western occupied territories, and I want to know why.

A. Inasmuch as I could in my capacity of Reichsminister for the East bring about a fairer treatment of the population compatible with a state of war, I did it.

Q. You don't really mean that, do you?

A. Well, I used to see those reports about those collisions and certain struggles between the mutineers and the police. As I already told you once, all the confidential people of those racial groups were represented in my department, so as to centralize in my department all of their claims and complaints, in order that they may be remedied as far as possible.

Q. Well, wasn't there a policy in existence in the German Reich which called for much more harsh treatment of the peoples of the East than accorded the peoples of the West?

A. Yes, that is indeed correct.

Q. I am not speaking of that. I am speaking of the situation where people in the occupied territories of the West were treated in one way, and the people in the occupied territories of the East were treated in another way. Now, I want to know why the difference in treatment.

A. Well, on the whole we had to face the actual Bolshevik danger, and when large numbers of those eastern elements had been sent to Germany we had reason to believe that there may emanate from those masses a certain danger to Germany.

Q. What about the situation of the Poles? You know and I know that the Poles were not favorable to the Russians, that they were anti-Bolshevik too. Why were they treated in the manner in which they were treated?

A. Well, I have never had anything to do with the Polish question, but the persecution of the German Nationals in Poland for the last 20 years would certainly have been a reason for it.

Q. Didn't you discuss that question with the Fuehrer on several occasions?

A. I submitted to the Fuehrer the various instructions which I had issued to the commissars, and he approved of them.

Q. I am not speaking of that. I am speaking of the Polish situation. Isn't it a fact that you held several discussions with the Fuehrer regarding your theories of racial superiority and racial inferiority?

A. Well, of course, we spoke about these various peoples.

Q. And isn't it a further fact that the Poles were decided to be one of the inferior peoples from your viewpoint and that of the Fuehrer?

A. The Poles were considered in such a way that they had a certain layer of cultured, educated people, but that the masses had been left sadly behind and in a low state.

Q. Wasn't it decided that the best way of dealing with the problem was to dispose of the masses of the Poles?

A. Well, I didn't speak to the Fuehrer about the Polish policy.

Q. You knew the Polish policy, didn't you?

A. Well, I saw it on the exterior.

Q. Yes, but you were familiar with what was happening, isn't that so?

A. Well, yes. At the first Polish campaign I heard of the slaughter of 50,000 German Nationals.

Q. I am not talking about the slaughter of German Nationals. I am talking about the treatment accorded the Polish population, and you know what I am talking about, so why don't you answer my questions? Now, my question is, did you not know of the policy regarding the treatment to be accorded the Polish people?

A. Well, I did know that in the course of these rather difficult events, the Poles were treated in a harsher way.

Q. Yes, not only a harsher way—

A. But as far as I know, the Governor General Frank was always endeavoring to bring about a better state of things.

Q. I am not talking about Governor General Frank. I am talking about the situation where the Polish people, whether in the General Gouvernement Poland or in occupied Poland, were accorded treatment along a particular line and with a particular aim in view, and my question is, did you not know of the policy regarding this treatment?

A. Well, I did know that the policy there was rather harsh.

Q. From whom did you learn that?

A. Well, there was talk about it.

Q. Talk by whom?

A. No. I never meddled into this business.

Q. It isn't a question of meddling. You stated you had talked about it, and I want to know from whom you heard that talk.

A. No. I can't. I once made a speech in Poznan.

Q. My question is, from whom did you hear regarding the treatment accorded the Poles?

A. Well, I can't say.

Q. As a matter of fact, it was a matter of common knowledge throughout Germany, wasn't it?

A. Yes. Of course, there was quite a great deal of talk about it.

Q. And the German people knew that Polish people were being killed, didn't they?

A. Yes. Killed why?

Q. I am asking you why.

A. Well, what we did know was that in the course of the war, and those things had been found out after the war, a certain number of executions did take place. That much I do know.

Q. You knew during the war that executions were taking place, didn't you?

A. Well, I had no certain information.

Q. Never mind about that. Just answer my questions. Did you or did you not know that these executions were taking place?

A. Well, I can't give any specific answer to this question.

Q. Why can't you? You know.

A. Because I can't remember whether I received any reports on such things.

Q. It is not a question of receiving reports, formal reports. You had all kinds of discussions with various people regarding this policy.

A. Well, I didn't discuss the matter, but, of course, those were things about which people did hear.

Q. Yes. As a matter of fact, the activities which were carried out were along the lines of your ideology, isn't that right?

A. Just a moment. An ideology has nothing in common with executions. Those are special cases of emergency which may arise in cases of war or revolution.

Q. And didn't you also advocate the theory of racial superiority?

A. I simply voiced the theory that certain peoples have certain superiorities for certain tasks, while other peoples are gifted for other tasks.

Q. Isn't it a fact that in your discussion and even in your writings, you advocated an expansion of the German Reich to the East?

A. That is correct.

Q. And, isn't the easiest way to expand, territorially speaking, to remove the people who are already occupying the land into which you wish to expand?

A. Well, this is a matter which had been debated within the Party, and it was agreed upon that those territories which had been separated or torn away from Germany had to reenter the German realm.

Q. Those weren't the only territories that were to be reincorporated or to be taken into the German Reich, were they?

A. That is something which one could behold practically. All of the Polish revolutionary units of Upper Silesia—

Q. I wish you would just answer the questions that I ask. It seems to me that this morning every time I have asked you a question, you go off on a tangent and do not give a direct response. Now, my question is, wasn't it contemplated that territories other than those which have formerly been part of the German Reich be made a part thereof by conquest or by other means?

A. Well, yes. Through the creation of the province of Warthe-land, a certain portion of that territory was to be incorporated into Germany.

Q. So, it didn't surprise you any, did it, when you heard that Polish people were being killed, as that would be a very logical way to make room for Germans to move into that territory?

A. Well, such a policy of murdering Poles, such a policy was not expected.

Q. Not expected by whom?

A. Well, in the previous 20 years, about one million Germans had also been expelled from Poland.

Q. I am not asking about that. Why don't you answer the questions as I ask them? Will you read the question?

(The question was read by the reporter as set forth above.)

The question is: You stated that the policy of murdering Poles was not expressed and I want to know the people who would make an expression thereof if they were going to. In other words, who created the policy?

A. Well, if there was anybody at all who had to determine the German policy in Poland, then that was the Fuehrer himself. I can't intervene into things which officially don't concern me.

Q. Do you recall conferring with Himmler regarding the policy in the East?

A. In the occupied Eastern territories?

Q. Yes.

A. I had a conference with Himmler regarding the relations between the ministry and the police.

Q. Do you recall any other conferences, particularly one on the 16th of November 1943, at which, among other things, questions concerning Estonia and Lithuania were discussed?

A. Yes. The problem of an autonomy for Estonia, Latvia, and Lithuania was discussed in that year several times.

Q. What about this conference that I just asked you about? Do you recall it?

A. Yes. Now I remember the 16th and 17th of November '43. It was the last time when I was in the headquarters to report to Hitler, and there I met Himmler.

Q. What was the subject of the conversation between you and Himmler?

A. Well, the subject which brought us to the Fuehrer was to discuss the autonomy, whether in a larger measure or a smaller measure, of these countries.

Q. That is not all you talked about either, is it?

A. The outcome of this conference was a proclamation to be issued to those three peoples.

Q. My question is: That is not all you talked about with Himmler, is it?

A. I also discussed with him a rather ugly incident which had taken place between an official of the administration at Minsk and the organizations to fight the partisans, which belonged also to the police.

Q. What was the nature of this incident?

A. Apparently in a state of inebriety, a few officers, after threatening, eventually killed the Commissar.

Q. That is not the incident I am concerned about. Think some more and see if you can't remember what else you talked to Himmler about.

A. I cannot recollect.

Q. Do you recall writing a memorandum regarding the meeting on 16-17 November 1943?*

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

A. I do believe so.

Q. Do you remember making a statement therein to the effect that you had had a heart-to-heart talk with Himmler?

A. No.

Q. Do you recall in the course of this conversation or this heart-to-heart talk that you impressed upon Himmler that it was quite impossible that he should repeat certain remarks of the Fuehrer? Do you recall that?

A. No, I don't.

Q. Now, these remarks were made in connection with the policy in the East and purportedly had been made to outsiders and to representatives of foreign nations. Does that help you to remember?

A. With my best recollection I don't remember what it was.

Q. Does it help you to remember if I tell you that these remarks had created what you described as an awful mess?

A. It can only be that Hitler will have spoken to Himmler about a larger autonomy to be granted to Estonia, Latvia, and so on, and Himmler will have repeated such remarks, and this will have created a certain mess. It was not his duty to comment on any political matters.

Q. What else could it have been besides the theory that you just advanced?

A. Those two points were the actual kernel or the gist of those conferences.

Q. Well, was it not a fact that Himmler had repeated certain remarks made by the Fuehrer with reference to the treatment to be accorded the peoples in the Eastern occupied territories, including Estonia and Lithuania, and that Himmler's repetition of these remarks had a bad impression?

A. With my best will, I cannot recall this.

Q. You think about it and I will ask you about it at some future time.

A. Well, I usually jot down certain recollections of years past. Otherwise, they just fall into oblivion.

Testimony of Alfred Rosenberg taken at Nurnberg, Germany, on 4 October 1945, 1030–1215, by Lt. Col. Thomas S. Hinkel, IGD. Also present: 1st Lt. Joachim Stenzel, Interpreter; Pvt. Clair Van Vleck, Court Reporter.

"The Final Solution of the Jewish Problem"

Q. I show you a photostatic reproduction of a six-page document, which is undated, and I ask you if you recall receiving the original of this document? For the record, it is identified as 212–PS.

A. I cannot imagine who could have sent in this report.

Q. Do you recall receiving it?

A. And I do not recall having read it.

Q. Were the ideas expressed therein in accordance with the ideas that you had expressed at various times?

A. The entire handling of the Jewish problem was very definitely in the sphere of the Chief of the German Police. On the other hand, I myself was in strict accord with the idea of curbing the individual activities of the population, to limit the Jews to certain districts, to put them to work, and so forth, and I have expressed that at various times.

Q. Isn't it a fact that the things set forth in this document were things which actually happened to the Jews in Russia?

A. I have not read that thoroughly. I did not read the report thoroughly, but, as I mentioned before, there have been incidents, and there have been attacks and outrages on Jews, that were committed during the advance of the Wehrmacht, particularly, on Jews that were in any way identified with the Soviet government.

Q. Were not Jews required, for example, to wear the Star of David in Russia?

A. I don't remember whether that was ever put through, because in Russia the Jews were living in separate districts in the villages and towns anyhow.

Q. They were segregated, were they not, into ghettos?

A. That was done gradually. At the very beginning, it was not done yet, but then as things developed they were segregated.

Q. Wasn't an effort made to remove Jewish influence from political, economic, cultural, and social fields?

A. To me, the important thing was to remove the influence of the Jews from the work of the Ukrainian population. What they did internally I do not know, and I never received any reports on that anyway.

Q. You have a report before you that indicates what was contemplated would happen to the Jews, isn't that right?

A. Well, I don't know whether those things were ever put into practice.

Q. Did you ever try to find out if they were?

A. I remember discussing the business of the Jewish life within Germany with Himmler once, and he said that in the camps, within 10 days, they had created their own social life, and I got the impression that the entire internal living conditions or social life of these people was more or less left to their own devices.

Q. You will note, in the first part of that document, that a statement is made to the effect that the whole Jewish question would be solved in general for all of Europe after the war, at the latest.

A. Well, this document was supposedly sent to me, by somebody; I don't even know what officer or what agency could have sent it to me. I don't know anything about it.

Q. Did you ever hear it discussed that a solution of the Jewish problem would be found after the war at the latest?

A. I have never participated in any discussions on the Jewish problem at all.

Q. You never have, at any time?

A. No, I have never taken part in any sessions or conversation on the solution of the Jewish problem, but I had my own views on that particular subject. I always felt that gradually it would be possible to increase the influence of Zionism and reduce the number of Jews in Germany by creating a place where they would be all by themselves in their Jewish homeland.

Q. Did you know the responsibility that was to be assigned to the SD and the Gestapo in the final solution of the European Jewish problem?

A. There was a very definite and very clear decree, in which it was stated that the entire administration and solution of the Jewish problem was the responsibility of the Secret State Police, and of the Security Service, and that no other agency was supposed to take part or mix themselves into these affairs.

Q. Don't you identify that document, that you have before you, as being a report on the manner in which Jews were to be handled in the areas that were under your jurisdiction, even though you did not have jurisdiction over the police functions?

A. This evidently was a sort of memorandum that was sent in to me, and which, I have no doubt, was filed like so many other memoranda and circulars and bulletins of a similar sort on various subjects, but I have no recollection of this particular document.

Q. Isn't it a fact, that the Jews were treated in the areas under your jurisdiction, as indicated in that memorandum?

A. I cannot say that, because as I said before, they were kept separate, and I had no reports on the internal conditions in these separate areas.

Q. As a matter of fact, wasn't it part of your problem to feed these people?

A. Well, the matter was no doubt handled like this, that the police reported to the Food Administrator the number of persons that were to be fed.

Q. Didn't you have representatives in all the larger towns and cities of the areas which had been assigned to you, and didn't those representatives make reports from time to time of their activities?

A. Well, I wish to emphasize again that I was sitting in Berlin, and I was responsible only for the entire policy in its greater lines. For the territories, separately, the Reichcommissars were responsible, who had been placed into their positions by the Fuehrer. Under the Reichcommissars were the general commissars. The only reports I received were from the Reichcommissars and from the general commissars, and I had no other separate system of reporting. I did not have a board that would travel and give me any special reports besides those that I received through the normal channels, from these Reichcommissars and general commissars.

Q. That may be, but you not only received written reports, but you had numerous people come to Berlin to tell you about these things that were happening in these areas, isn't that right?

A. Oh, yes, there have been people who were sent, for instance, from the staff of the ministry to have discussions with members of the territorial administration, or maybe one of the commissars was coming by, or maybe other officers, that had lived in the area, would come and report to me informally.

Q. Yes, and many of them talked to you, didn't they?

A. Very frequently I would say, but certainly I do remember a few with whom I talked.

Q. You have been interested in the Jewish question for years, haven't you?

A. But I was so overburdened with the work of establishing my own Ministry, and the entire Jewish problem was so neatly separate from any of my responsibilities, that I did not spend any time on that, and concerned myself exclusively with the responsibility that actually lay with me.

Q. You mean you never discussed the Jewish problem with anybody from the time you were appointed Minister for the Eastern Occupied Territories, is that your statement?

A. Well, it is correct that I have not spent any more time on those details, that is right.

Q. You have been interested in the Jewish problem for years and during the time that you were editor of the Voelkischer Beobachter you wrote numerous articles regarding it, isn't that right?

A. Yes.

Q. I find it a little difficult to believe, that with all interest you have had in this problem for so many years, that you would drop it so suddenly when you became Minister for Occupied Eastern Territories, and wouldn't have enough curiosity regarding the treatment of the people under your own jurisdiction, that you wouldn't ask anybody or receive any reports about it.

A. It was always our habit that, once an assignment was given to a man, nobody else meddled with the man that had the assignment.

Q. That may be, that it wasn't your responsibility. I will go along with you to that extent, regarding the treatment of these Jews, but you were certainly informed of the treatment that they received, and you knew about it.

A. Well, in great lines I naturally had to assume that they were being housed fairly well, and that they were fed, and that they had work to do like, for instance, in the city of Lodz.

Q. You know that isn't the report you received, as to what was happening to these people, in the areas, over which you had jurisdiction. You know that the reports you received indicated that they were being treated, just as the memorandum you have just read indicates they were going to be treated, isn't that right?

A. That they were separated, that they had working assignments, that they were making coats and shoes and things like that, like they did in the city of Lodz, that I knew, but that the conditions were naturally somewhat difficult, I fully realized.

Q. Yes, and you knew that they were being treated very much in the manner set forth in this memorandum.

A. That I cannot state in detail, because I was not informed in detail.

VII. HANS FRANK

Excerpts from Testimony of Hans Frank, taken at Nurnberg, Germany, 1 September 1945, 1320-1425, by Thomas S. Hinkel, Lt. Col., ISG. Also present: S/Sgt. William A. Weigel, Court Reporter; Cpl. W. Magnus, Interpreter.

Rise of the Nazi Party Lawyer

Q. When did you join the Nazi Party?

A. I had been a member of the Nazi Party for a very short time in 1926, but in October of the same year I quit the Party. And in 1927 at the request of Hitler, I rejoined the Party in my position as lawyer.

Q. This request was made to you personally by Hitler?

A. To be able to state before a court that I am a member of the Party, yes. Hitler expected from that a great effect on the court due to the fact that I was a member of the Party.

Q. I don't quite understand what you mean. My question was, in 1927 did Hitler ask you personally to rejoin the Party?

A. Yes. May I add something to this?

Q. Yes.

A. At the time I was a young lawyer and I quit the Party again in 1926 because of certain things about the Party I did not like. I was active at the time at the law section of the technical school, the School of Technology at Munich, to become a teacher of law, but I was registered as a lawyer at the same time. Then one day I saw in the newspaper the following ad: "We seek one lawyer to defend members of the Party without means before a German court to make it possible to give them a legal defense." This was a trial held in Berlin. And I told Hitler I would like to defend those young people. And therefore the first trial ever held was this trial in Berlin. It happened this way that Hitler learned that here is a young lawyer ready and willing to defend members of his Party. In this way Hitler took up connections with me in Munich and when he met me one day at the Party office which was at the Schilling Strasse he asked me if it was a good idea for me to work for the Party. I told him at the time that my object was not to become a lawyer, but rather to pursue an academic career, but I told him, "If you need me, I'm willing to do it." Officially I remained with the School of Technology in Munich until 1929, but at that time the trials became so numerous that I had to make a new decision. I joined the Hitler movement as a lawyer and I worked in the Party as a lawyer.

Q. When was this?

A. It began in 1927 and the trials became more and more numerous. Since I was willing to do it without money, I did it.

Q. Were you ever a member of the Reichstag?

A. Yes.

Q. When?

A. Since September 1930. This was also in connection with such trials, because as a member of the Reichstag, I got a free ticket on the railroads and I could move easily. Therefore, the trial expenses were taken care of.

Q. Were you not elected a member of the Reichstag as a member of the Nazi Party?

A. Of course. I was on the Party list.

Q. And you sought election on the basis that you were a member of the Nazi Party?

A. I hadn't sought it, but Hitler put me on the list. I was on a holiday trip, and when I returned my wife said, "Look here. You are on the list for members of the Reichstag."

In March 1933, I was made Bavarian Minister of Justice and remained there until December 31, 1934, and then I became Minister of the Reich.

Q. Were you not also made Reich Commissioner for Justice at the same time that you were made Minister of Justice of Bavaria?

A. A little bit later. It may have been in April of 1933. I was not reelected commissar for General Justice. I was the commissar for equalizing the laws of the various states with the Reich. By that I mean the reorganization of the law administration.

Q. Do you mean by that that your position as Reich Commissioner of Justice required you to take the laws of the several different sections of Germany and to codify them or to make them uniform or just what did you do? I don't quite understand the term "equalize."

A. No. It was only a matter of the administration of the justice, and the effect of this was the taking over of the justice administration of the German states by the German Reich on January 1, 1935.

Q. What states do you have reference to?

A. Prussia, Bavaria, Saxony, Thuringia, Anhalt-Lippe. There were about 18 states altogether.

Q. You mean there were minor variations in the laws of these several different parts of Germany, and it was your duty to harmonize them?

A. This task was taken care of by the Minister of Justice, Dr. Guertner. My job was the preparation of the reorganization of the administration of the various German states which were taken over by the Reich 1 January 1935. May I add something?

Q. Yes.

A. In this capacity I was responsible to the German Minister of Justice, Dr. Guertner. I was a member of his special staff for this particular task. I was not a member of the cabinet.

In my position as a legal man in the Party, I came more and more in conflict with the direction as represented by Himmler and Bormann. This whole development as to concentration camps and so on, as also adopted later by Hitler himself was very much against the original Point 19 of the Party program which talked of a common law for Germany. In addition, Hitler gave an oath before the Reich Supreme Court in Leipzig that he would come to power only legally and if he came to power he would govern legally. As long as the Fuehrer was in the position before he came to power to need lawyers and judges, he could need me, but once he had come to power, I felt more and more that he would drop these formalities and rule in an authoritarian way, as a dictator. This development can be traced in a constitutional manner. While before he came to power he told me continually how happy he was to have me, those ties were broken immediately when Hitler came to power. I noticed already on 30 July 1933, that he had promised me that I would become the Minister of Justice, but then he must have made up his mind that I was too legal-minded. Then in 1933 I began to notice this, because I founded the Academy of German Law. This academy was a public corporation, and I called into this academy of German law all prominent German legal minds without respect to party connections. This academy was the center of the fight to maintain the idea of law in Germany. The development makes it clear that thereby I got more and more into a position of opposition. This is generally known in Germany. I don't want to say more about it. One should hear a lot of people in Germany who know these facts, for this was the content of my life.

Frank Claims He Opposed the Fuehrer's Lawlessness

Q. As I understand your statement you had an intellectual opposition to the course which the Fuehrer's Government was taking?

A. It was more than merely intellectual. Even if I could not stop Germany from becoming a state of terror, I saved the lives of hundreds of good men. I was the only one who dared to get up to say in 1940 that the Reich is going to perish because there is no law. I would like to have this speech used. It was a sensation in the public mind. I was discharged immediately.

Q. Discharged from what?

A. From all offices. I was discharged from offices that I had created myself.

Q. How often did you see Hitler?

A. During the fight for power I saw him relatively often.

Q. During what period of time?

A. Between 1929 and 1933. I had to go and see him about the trials and I had to get the necessary authority for these trials from Hitler. I want to mention the matter of concentration camps which I brought up before in connection with the question of the Colonel, for from this period on I noted that the Fuehrer avoided to talk things over with me. And the second period of conflict was the Roehm Putsch, during which time as the Minister of Justice I had to sit with the arrested men to avoid having them shot by SS. This made Hitler furious. Hitler called me in personally and said, "I demand that you hand these men over immediately for execution." I was sitting in the room of the prison director. I told Hitler, "I am the Minister of Justice in Bavaria, and without legal authority I cannot hand these men over." Then he said, "I am the Fuehrer of all constitutional and political matters in Germany, and I take the responsibility that these men be handed over." Then I said under reservations of Reich law which Hitler had promised to proclaim, I told him to hand me a list of the men who had to be surrendered. While originally there was a list of two hundred names, after long hours of consultation, the list was reduced to eighteen names, so that my interfering in this matter on that day saved the lives of over two hundred men. That was the beginning of the end for me as Justice official and the law was proclaimed and all the steps taken by Hitler were legalized. Hitler said, "I believe we have made an entirely wrong man the Bavarian Minister of Justice."

Q. Didn't you also tell me that you considered that Hitler's actions in making himself into a dictator were opposed to the principles of the Nazi Party and to the German law as it stood?

A. For instance—

Q. Just answer my question.

A. In my opinion, yes.

Q. How do you account for the fact that you wrote a book in 1938, five years after you say you started to oppose Hitler and his ideas of dictatorship, and in this book you set forth a juridical, a legal foundation for the Nazi Party state?

A. Hitler had been legally elected the head of the German Reich after the death of Hindenburg. In this capacity one cannot say he was a dictator. He was not a dictator. In a constitutional way he was not a dictator. He simply had united in one person the head of the State, the head of the Government, and the head of the Party.

Q. Did he do all that legally in your opinion?

A. It was legal since it had been consented by the German people by vote, through a vote. What I accuse him of is the doing away of the independence of the court and judges, the introduction of concentration camps, and the loss of the individual legal rights.

Q. All these things happened before 1938, didn't they?

A. Yes. They happened before 1938 but I still had the hope to be able to force him back again sometime.

Excerpts from Testimony of Hans Frank, taken in Nurnberg, Germany, 6 September 1945, 1015-1200, by Lt. Col. Thomas S. Hinkel, IGD. Also present: Herbert Sherman, Interpreter; T/4 R. R. Kerry, Reporter.

The Aim of Nazi Law

Q. You remember making the address at the Nietzsche Archives in Weimar in 1934?

A. That I did not as Minister of State for Bavaria but as president of the Academy of German Law. This speech was at a meeting of all the law professors in Germany—not all of them but only the law professors, law-philosophy professors, and I invited Rosenberg and some other professor. The reason that I had it there was that I knew personally very well the sister of Nietzsche who still lived at this time. It was Mrs. Foerster Nietzsche. That was the reason why we met at the house where Nietzsche spent the last years of his life.

Q. Now, do you remember stating in the course of the speech that you made in Weimar at the Nietzsche Archives that the aims of the Nazi law were not the protection of the weak at the expense of the strong?

A. That was just torn out of the whole speech. That is the idea of Nietzsche. Nietzsche said that.

Q. Did you or did you not make that statement?

A. In the way it was shown here I certainly had not said it, although it might have been in the whole speech. Naturally the law always aims to help the strong and to develop the strength of the healthy part of the State. If you want to try to pose this little part of the whole speech in a way that I have said, you just eliminate the weak at the expense of the strong, then I am sorry to say that is entirely wrong.

Investigation of Conditions at Dachau in 1933

Q. When did you first visit Dachau?

A. Only once, in connection with all the Party leaders. This happened after a Party Congress in Munich. I don't know in which year it was. I think it was in 1935 or '36.

Q. As a matter of fact, didn't you make a report on your visit to Dachau?

A. On this occasion there was a parade of the police force in the camp. We saw the general set-up, but we didn't actually see the prisoners and so on.

Q. To whom did you usually make reports?

A. I don't believe that I made this visit during the time I was Minister of the State of Bavaria.

Q. I don't care about that. Did you or did you not make it?

A. I cannot remember that I made any kind of report.

Q. Didn't you order an investigation to be made of Dachau back in 1933 or 1934?

A. That was just the discussion with General von Epp which we discussed in our last session.

Q. What did you discuss with General von Epp?

A. It was about the first event we had in the concentration camp of Dachau. The court of justice asked to make an investigation about several killings at Dachau. I asked General von Epp to make an investigation about this case and to make the report at Munich. At the same time I addressed myself to Reichsminister of Justice Guertner, and I asked him to come to Munich, and he came to Munich and I insisted that he himself had to talk to Adolf Hitler, to whom he had to report directly, and to explain those events. He took all available material with him. Later it was explained that those were only single cases and were taken care of and that no repetition of this kind of accident would happen again. With this kind of explanation we had to satisfy ourselves because there was no more we could do about it.

Q. The fact of the matter is that you knew about Dachau back in 1933 and General von Epp, or whoever made this investigation for you, told you about the conditions which existed, didn't he?

A. Not General von Epp, but my state prosecutor told me and I reported to General Epp.

Q. So you did make a report on Dachau, as I stated some time ago?

A. It was only a protest against this system they used at this time at Dachau.

Q. What was the system they used at that time at Dachau?

A. Just arresting people without court trial, without judgment, and intern them or even kill them and then explain that they only shot them in an attempt to escape. I made this protest and I always kept up my protests against this kind of unlawful dealing.

Q. As a matter of fact, wasn't the use of Dachau and similar concentration camps part of the general plan some of the people in the Party had to control Germany according to their own dictates?

A. You cannot always connect the 200,000 or 2,000,000 of the Party with the aims of Himmler or Hitler. Hitler was the might as the legal Reich Chancellor. He got his position in a very legal way.

Q. But weren't these activities as well as other activities part of a general plan on the part of a few people including Hitler, including Himmler, and including other people to take over the German Government?

A. Yes. Himmler and Hitler and Heydrich and perhaps even Goering certainly had this in mind and were aiming to get hold of the German government by this means. But these aims were developed in an "inner circle" and nobody else could have taken part, especially not because Hitler was at this time still under Hindenburg and had to keep faith anyhow on the exterior.

The Difference Between Legality and Illegality

Q. What did you consider illegal about the way Hitler was operating?

A. There were different things to consider.

Q. Let's consider them one at a time.

A. The first illegal thing was the introduction of concentration camps. He had no right to do so because he was under oath as a Chancellor of the Reich and was bound to the law of Weimar, but he legalized that later by asking the Reichstag for this change of law.

Q. Well, didn't you consider that in violation of the fundamental rights of the German people?

A. Yes, very much so.

Q. Did you as a member of the Reichstag vote in favor of that change?

A. Those changes to the German republican law never referred to the introduction of concentration camps.

Q. You knew what they meant and for what?

A. Hitler just asked the Reichstag by a majority vote to give him the right to change the German constitution so everything would be legal. At this moment we agreed to it. We did not know to what extent Hitler would use his might.

Q. Did you personally agree to that change?

A. Yes. Even the members of the Center Party, the German Nationalist Party, too. We would never have voted for that if we would have known in advance what happened later.

Q. You knew then, that Dachau was in existence?

A. No. That was before. It was during the Reichstag session when Hitler for the first time appeared as Chancellor of the Reich. It must have been around March 1933.

Q. Let's go back to my question: Wasn't it a matter of discussion among Party members prior to the time that Hitler became Chancellor that one of the means whereby the power of the Party would be effectuated was that Hitler would become the absolute ruler of Germany?

A. From my point of view, the very fact that Hitler became Chancellor of the Reich was quite sufficient for the aims of the Party.

Q. My question still is: Was it not a matter of discussion prior to the time that Hitler became Chancellor that he would take over complete power in Germany?

A. I don't know if this was discussed in Party circles. In my circle of Party lawyers it was not discussed.

After the death of Hindenburg, ordinarily Germany would have had to have an election to elect a president. The fact that Adolf Hitler did not do that at that time but instead put himself in this position, that certainly was the abolition of the German constitution. But later on he legalized that by asking the German people to vote for it, and the vote of the German people gave him the legal right. The influence of the German people was tremendous.

Q. And so when you came back to Munich and found on your desk a notice to the effect that, as I understand your words, the Reichstag had voted power to Hitler, that wasn't any great surprise to you, was it?

A. No. That's just a law like every other law. Why shouldn't he have the might? If it is only done in a legal way, why shouldn't he?

Excerpts from Testimony of Hans Frank, taken at Nurnberg, Germany, 6 September 1945, 1430-1700, by Lt. Col. Thomas S. Hinkel, IGD. Also present: Herbert Sherman, Interpreter; Pvt. Clair van Vleck, Court Reporter.

The German People—"Hitler's Private Property"

Q. You said you were in opposition to Hitler and disagreed with Hitler in various things. We have discussed concentration camps. What are the other things you had in mind?

A. Hitler brought everything in a legal way by passing laws.

All of those points I am now going to criticize were formerly legal laws. The first things I accuse Hitler of is the fact that he abolished the idea of the creation of the German Reichstag. We discussed this morning that the Reichstag voted by majority full power to Hitler under the condition that the Reichstag in itself, and its rights, would continue the same way it was working under the Weimar system. Practically, Hitler kept his word, because actually there was a Reichstag up to the end, but the moment he dissolved all the parties, the real meaning of the Reichstag didn't exist any more. The German people, accordingly, were represented only by the Party in the Reichstag. That was one of the reasons why I founded the Academy of German Law. I called to this academy all those persons who were of importance in German Law, without special consideration for their Party membership. The idea was to try to have operative law in Germany through this academy. Is that sufficient or do you want me to explain it further?

The next point I criticized is the fact that Hitler dissolved the Reichsrat. The Reichsrat was a representation of the different eighteen states, eighteen or sixteen states, which altogether represented the German Reich, such as Bavaria, Prussia, and Hamburg. By the fact that Hitler dissolved the Reichsrat, these different countries did not have any influence on the law making in Germany any more. Up to this date the influence of the Reichsrat on the German law making was quite important. Now, Reich law could be made by the Reichstag without consulting the Reichsrat.

The third point is the position of the Reich President, which Adolf Hitler dissolved in 1934 after the death of Hindenburg. In the case of the Reichsrat and the Reich President, Hitler could explain that he never took an obligation to keep that up, contrary to the continuation of the Reichstag, where he took the obligation to make no change whatsoever. The next point would be the fact that Hitler dissolved all the existent little states into one Reich. He degraded those states to provinces. Those states lost their character as a state and were dependent entirely on a centralized government of the Reich.

Now, I am coming to something else that I wanted to criticize very strongly, and that is the fact that Himmler was able, under the protection of Hitler, to build up a state in the state, with the help of his SS. This SS state in the German state was expanding and growing every day, taking over more rights and control through menace or influence. The rules for the SS were made by

Himmler. Himmler had executive rights, not only for the SS, but for the police. He had his own law making. He made out the life rules for the members of the SS. A leader of the SS could marry only with consent of Himmler. The SS had their own SS courts where any kind of crimes or theft was dealt with. The biggest disadvantage Adolf Hitler brought into Germany was the fact that he let grow this SS state in the state. Those special assignments Hitler gave Himmler were made known not only in the Party but in the state. The knowledge of those rights Hitler gave Himmler was made known not only on a high level in the Reich, but down to little states and provinces.

Himmler built up his own science. He created his own institute for scientific research. Himmler had his own representative in the various groups of economy everywhere in Germany. In those parts of the government where Himmler had not direct control, members of the SS were sent, in order to control those parts, informally, for Himmler's advantage. Himmler himself could never be accused by anybody in the Reich. He could not have been prosecuted by anybody in the Reich, but he had the possibility to prosecute or to accuse everybody in the Reich.

Everything that is coming now is strictly connected with what I said before; for instance, one of the most serious reproaches which can be made to Adolf Hitler is the fact that he broke the promises he made to the Christian Religious Organizations and the churches. I mention for instance the Concordat Hitler made with Rome. This Concordat was made in '33 or '34 and was quite promising for the Catholic Church, but thanks to Himmler, the Catholic Church in Germany had a terrific situation during the period beginning '35 to the end of the war. Everything protected through the Concordat was abolished. The Catholic faculties at the universities in Munich were dissolved in contradiction of the Concordat. I tried on several occasions to do something against this abolishing of now existing rights but without any success.

Nearly the same thing happened to the Protestant Church but not that bad because the Protestant Church did not represent the same state, might, and power the Catholic Church had through Rome. A good example here is the case of Pastor Niemoeller. All those were the first steps toward the final breakdown of any kind of law in Germany. The security of the individual to find his rights in justice, or at court, were nonexistent by the fact that everybody, even if the court decided that the man was innocent, could have been picked up at the back door by Himmler's SS and be put into a concentration camp, internment camp, or political prison.

Q. Have you finished?

A. No. One of the worst things is the fact that Hitler introduced, during the war, the responsibility of the whole family for the fault of one member of the family, and named that Sippenhaftung. That was by far the lowest grade law could attain.

Now I should explain all those different points with various examples if you should like me to do so. In the very beginning when the Reichsrat was abolished, and things like that took place, nobody realized what the future would be. Now, looking back, we see that everything served the sole purpose: to make the whole German people the private property of one man, Adolf Hitler. For me there was only one possibility left. I wanted to save the independent judge. If I only could help to have an independent judge, then law in Germany would have been granted, and you will not be able to show me in any of my speeches in which I did not point out that we needed in all of Germany an independent judge. The whole character of the state was false. What was in the beginning a voluntary people movement became later a forced institution. It was not only contradiction to law; it was contradiction to the Party program itself, because the Church was mentioned in the Party program, so was the maintenance of law mentioned in the program.

Treatment of Jews in Government General of Poland

Q. What was your job in September 1939?

A. I was drafted and I was a lieutenant in the Army.

Q. What was your job in October 1939?

A. I was nominated by the Fuehrer as Governor General at Cracow.

Q. Why did he give you that job?

A. There are many who say that he liked to see me in such an exposed place.

Q. Never mind what many of them say. What do you think? Why do you think you got that job?

A. I sincerely believe at that time that Hitler wanted to give me a chance to prove to him what I was able to do, as a man of administration, but I lost his confidence already after one week when I saw what kind of responsibility Hitler gave to Himmler and to Goering in the same area I was supposed to be the responsible man. My first action was that I resigned.

Q. It is pretty hard to believe, isn't it, that you had all this opposition to Hitler from 1933 to 1939, and that he would give you such a nice job? You don't think that is odd, do you?

A. I was a member of the Party. I was known as a man of law. I was known on an international basis. I visited Poland twice. The same way he made von Neurath Protector in Prague, he nominated myself a Governor for Poland.

He told me that this was not a situation for me to be a lieutenant in the Army during the war. I was the only minister and Party leader who was active in the military force. I told him, "I am an officer in a very proud regiment and now we are at war, and now we have to give an example with a gun in the hand." Hitler said, "I don't care about that. You will have a special war task and you just have to take your assignments." Hitler said, "I promise you I will help you to overcome all difficulties, and you may see me any day you want to discuss anything with me."

Q. What did he tell you he wanted you to do in Poland?

A. For Hitler the most necessary thing was to get order in economy and travel. It was general administration and to take care that all troubles we found in Poland would be eased.

Q. What special instructions did he give you with reference to the treatment of the Polish population?

A. He only said that the situation in Poland was especially difficult right then. He said I must understand that, therefore, he would have to give special jurisdiction to Himmler and to the Army to guarantee that order will be reestablished as soon as possible.

Q. What was your first official action when you were appointed Governor?

A. After my entry into Cracow, on November 1st or November 7th, a proclamation to the inhabitants of Cracow.

Q. What did you do about getting labor?

A. It was a voluntary demand to the population.

Q. As a matter of fact, your first official action really was on the 26th of October 1939. Isn't that right?

A. No.

Q. And it wasn't on entering into Cracow, was it?

A. I was nominated on the 26th of October.

Q. You were appointed that day, too, weren't you?

A. Yes.

Q. Do you remember a decree introducing forced labor for all Polish nationals of Jewish descent?

A. If I signed it, it came from me. I don't know if it was the 26th of October.

Q. Was it the 27th?

A. That I don't know.

Q. Do you remember the decree?

A. Yes. I remember.

Q. What else do you remember about it?

A. It was not forced labor; it was an obligation to work.

Q. Did you order that all Jews be brought together in special places for this voluntary work, as you describe it?

A. I would like to see the decree, if it was a general order, or if I have signed this special order.

Q. You will be shown it soon enough. In the meanwhile, I want to test this memory you spoke about this morning.

A. At the very beginning, Buehler (nominated by Frank as chief of his office) and some other representatives of different ministries handed to me decrees I had to sign.

Q. Did you read those decrees?

A. I did not only read the decrees, but I studied them. I agreed entirely, that during a war, it was quite all right to use this kind of labor the way we did, naturally, in the interests of the Reich.

Q. I am not talking about that right now; I am just talking about whether you did, or did not, on or about the 26th day of October 1939, issue the kind of decree I just told you about.* Did you or didn't you?

A. If that is my signature, then I did.

Q. Don't you remember?

A. Yes; it was a special wish of Adolf Hitler that under any condition we had to start at once with the work.

Q. So you did issue those decrees, didn't you?

A. Yes.

Q. Of course you did, and it was your first official act too, wasn't it?

A. No.

Q. It was the second decree that you signed. Is that it?

A. It seems that all those decrees were together on the first number, where different laws were passed.

Q. When did Hitler tell you to issue this decree?

A. Already during the conversation I mentioned before.

Q. Why didn't you mention this decree when you told me about that conversation?

A. I told you that it was Hitler's special wish, to reconstruct as soon as possible, Poland, and to get order into this country.

Q. How about the Polish Jews, did they like you?

A. I was not responsible for the Polish Jews. It was Himmler who was charged with all the rules referring to the treatment of Jews in Poland. In a case where the Poles were part of a resistance movement, even those Poles were under the jurisdiction of Himmler. As a result, the Polish Jews worked under police supervision, and you must find it in one of these decrees.

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. You had something to do with the Polish Jews, though, didn't you?

A. Yes. I tried to save some of them at my residence.

Q. Did you save many of them?

A. During the time I went to the Reich, they took them away from me. I had a possession near Cracow. I was living on a summer residence near Cracow, and there a Jewish couple were in charge of my stable, and I tried to save them, too, but during the time I had to leave for Germany they were taken away from me.

Q. What about this decree of October 26th?

A. This decree on October 26th mentions the fact that the Jewish forced labor had to work under police supervision.

Q. That is all the dealings that you had with the Polish Jews, just that one decree?

A. Yes. It must be the only thing. I don't remember anything else. It might be possible that I had another decree. I made another decree concerning the ghetto in Cracow, but I am not sure about it. It might be that even the order for the construction of the ghetto was a part of the police administration, not of mine.

Q. Do you remember now any other decrees that you signed dealing with Polish Jews?

A. I don't know if you mean by that one of the decrees where the Polish Jews were obliged to have the Star of David on an armband.

Q. Do you remember that one?

A. I don't remember if I made the decree.

Q. You know very well that you signed that decree, don't you?

A. Did I sign that? If I did, then it is all right. I don't want you to believe that I want to deny anything I signed. I have been in prison for four months, and you must realize it is very hard for me to concentrate myself. I don't want you to have the impression that I want to deny anything I did.

Q. Didn't you on the 23d day of November 1939 issue, above your own signature, a decree calling for the segregation of Jews in the General Government of Poland, and compelling all Polish nationals of the Jewish race, above the age of ten, to wear a white armband with the Star of David?* This decree threatened imprisonment and a heavy fine on all who failed to comply.

A. Yes. In my subconscious mind I remember that.

Q. What about your conscious mind?

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*See document 2672–PS, Vol. V, p. 368.

A. During this time, it was a rule in the whole German Reich that the Jews had to wear the yellow star on their breast. I didn't want to have the same thing and thought it would be a good idea to have something else, because I judged it much better than to have this yellow star; so I suggested the white armband with a star, because all the German workers anyhow had some kind of an armband. I thought it was not so discriminating for the Jews to wear an armband, something similar to those of the German workers. It was a rule in the Reich, and I considered it much better than those the Reich had now in order. It was much less discriminating. Besides that, those were all general orders coming from the Reich.

Q. Where was it intended to concentrate the Jews?

A. In the East.

Q. Whose intention was that?

A. From Hitler and those men, Himmler, and those men around him.

Q. Did you ever get any written directives or instructions with reference to that?

A. No. Never.

Q. Then how did you know it was Himmler's plan to do that?

A. Somebody told me in Cracow, that all the Jews were to be sent to Theresienstadt and the East. At this time we considered the East as containing all of Russia.

Q. Do you remember stating, during that speech, that it had been decided that instead of concentrating all the Jews in Poland, that Poland was to serve merely as a transmission camp and that the Jews actually were to go further East?

A. That is a question of the policy concerning the Jews that was only in the hands of Himmler. He was so much in charge of this question that he even was not obliged to make it known to the countries concerned about what kind of action he was about to take.

Q. You don't remember then making the statement about which I have just told you?

A. I don't want to deny that on some occasions I did mention something about the solution of the Jewish question, because this question at this time had to be brought to its end.

Q. Do you mean the solution of sending them East?

A. No. We were waiting for a solution from Berlin, to know exactly what we could do about those poor men.

Q. What was your suggestion for the solution?

A. I never was supposed to make any solution. We worked quite well together with the Jews. They were distributed through the country, and without the Jews there would never have been any commerce. The Jews in Poland are specialists, like tailors or shoemakers. Without those little Jewish commercial men, it would have been very hard to get along. My government had always the intention to keep those Jews in their places because we needed them in their work. We proved that. We had to shut down the factories after the moment Jews were deported from Poland.

Q. Who established the ghettos in Poland?

A. The police started with it. They concentrated them together in certain living quarters.

Q. What was your connection with that?

A. I tried to get a certain law into all of these decrees, and I remember now, that I made a decree about the construction of Jewish living quarters.

Q. You established the ghettos, didn't you?

A. I only made these decrees lawful. It was not the task of the police to consider the question of sewage, water, and labor and taxes for these ghettos. That was my task.

Q. My question is this: Did you or did you not, by decree, legalize the setting up of ghettos?

A. I only tried, when these ghettos were erected by the police, to get a legal background and foundation for those things.

Q. You did that by issuing a decree, didn't you?

A. In the interests of everybody, and especially, in the interests of the Jews.

Q. All I am saying is that it was your ultimate responsibility, as Governor General of Poland, to administer these ghettos. Now, you did it by one means or another, but the fact of the matter is that it was your responsibility; isn't that so?

A. Originally, these ghettos were erected by the police. I later had two decrees to legalize those facts. Furthermore, I was charged with administration, but we had terrific difficulties with the police who did interfere daily in our administration measures. The idea of my decree was only to protect these Jews, who, without any special decree and law, would have been diminished or eliminated. There was always the talk about the elimination of the Jews, and I tried, by these decrees, to save them. It was entirely wrong. I know that you will always want to put me in a position where I will be accused as the originator of these ghettos, but that is not the truth. They were already erected, and it was only my task to legalize these things.

Q. Did you ever visit the ghettos?

A. No. Once I went to the ghetto in Warsaw.

Q. What did you find there? What were the conditions?

A. The conditions, in the long range, were absolutely impossible. Under any conditions, a change was necessary, and then started the biggest battle I ever had. It was impossible to get the necessary foodstuffs for these 100,000 poor men. We did what we could, but the land was poor. The country was poor, and all around was the police. We really had to smuggle in food. I ask you to hear Governor Fischer who was at Warsaw, who is able to give you a detailed report confirming what I just told you. For a certain time, conditions in the ghettos were better. The Jewish inmates in the ghetto made treaties with German industries for deliveries of uniforms and other things.

"Frank's View of The Jewish Problem"

Q. I haven't any impressions at all regarding your Jewish activities, but I want to find out from you just what your opinion is with respect to that.

A. We had to solve the Jewish problem in Germany. My idea of the solution was to get the Jewish population out of Germany through emigration. That means to go into other countries who would like to have them. It was very difficult in the years after the revolution for the German population to live together with the Jews, and it was originally Hitler's program to emigrate all the Jews from Germany.

Q. What was your opinion of the laws which were enacted depriving Jews of their full rights as German citizens? Did you agree or disagree with these laws?

A. Basically, I agreed with these laws. The Jews are a special people, and they should have their own state. The best thing would have been if they would have been given a state and they would have lived over there and would have been happy. This Jewish problem is not a specific German problem, it is an international problem, and starts to be a problem in every country all over the world: It is not only a problem of this time we are living in, actually, but it is a thousand-year-old problem.

Q. How do you reconcile your professed desire to have the German state operate on a legal basis and, therefore, your opposition to Hitler because of some of the things that he did, and your statement that you agreed with these laws that made Jews less than German citizens?

A. That at that time was my opinion about the Jewish problem. That really at that time was my opinion. I was at that time a very poor man. I saw the Jews had all very rich positions and fortunes, and out of this youthful criticism, I came to my judgment about the Jews.

Q. As a lawyer, did you consider it right and proper, and in keeping with fundamental concepts of German law, that by decree Jews of German nationality were deprived of certain citizenship rights?

A. If the Communists would have gained power, the way Hitler gained power in Germany, they would have deprived all the Germans of their rights, fortunes, and so on.

Q. Never mind about that. Just answer my question. How do you reconcile these opinions?

A. I didn't have at this time any reluctance to these laws against the Jews. Today, naturally, I am more awake. Today I naturally realize that you cannot solve the problem this way. You have to have a big international conference or you have to make provisions where to put the Jews in a normal way. Besides that, I think we should have made a difference between the Jews, those Jews who were citizens a long time, and those who came after the revolution in the east into Germany.

Q. Did you, in any of your writings, point out that it was contrary to the fundamental German law to deprive one part of the population of citizens' rights on a racial basis?

A. I never wrote against this question, but I did agree with the development of the Jewish question in Germany.

Q. Did you agree with the Nurnberg laws?

A. Yes. I did, because I considered it as a very necessary law.

Excerpts from Testimony of Hans Frank, taken in Nurnberg, Germany, 7 September 1945, 1030-1215, by Lt. Col. Thomas S. Hinkel, IGD. Also present: Siegfried Ramler, Interpreter; T/4 R. R. Kerry, Reporter.

Persecution of the Jews in Poland

Q. Do you remember the removal from Warsaw of a large number of Jews in 1942?

A. When should that have been?

Q. During the period 22 July to 3 October 1942.

A. This might have been reported to me later on. Was this during the time of the ghetto rising?

Q. You know whether or not it was reported to you that a large number of Jews had been removed from Warsaw during a period in 1942?

A. I have understood the question. State Secretary Buehler would know it. I know that a conference had taken place between the City and the State Secretary, but I had not taken part in this conference.

Q. Well, wasn't the result of the conference reported to you?

A. No. The competent authority was in Warsaw.

Q. Is it your statement that as Governor-General of Poland, you didn't know that a large part of the population of Warsaw had been removed therefrom?

A. Certainly I got to know it. That's quite clear.

Q. That is my question to you. Wasn't it reported?

A. It certainly was not told me by State Secretary Buehler, to whom the report was directed. If a report had been issued, perhaps it was by Governor Fischer, who was personally in Cracow.

Q. I am not trying to quibble with you on words. When I say report, I don't mean necessarily that a formal written document was presented to you concerning these matters. What I mean generally is, were you not informed by one means or another whether orally or in writing of these events?

A. The question about the transportation of Jews has certainly been reported to me not only from Warsaw but other sources.

Q. What other sources?

A. Out of the whole Reich.

Q. Didn't Buehler tell you who told him about these things?

A. Not only Buehler spoke about it, but also Secretary Boepple spoke about it, and besides that, this was a general plan where always the names were mentioned because this was a problem that affected the administration all over Germany; but what we did know was that Himmler was the Reich Commissar for Jews. Only once a written document came into my hands from Lammers in which was written that all affairs in the Reich and all occupied territories of the Reich are under the jurisdiction of the Reich SS Commissar Himmler. This document has been repeated in various forms. Once it came in a connection where the police alone could dispose of the property of the Jews: that all the property that belonged to Jews who were being evacuated came under the charge of Reich Commissar Himmler and not in the charge of State authorities, and this also applied to the General Government.

Q. I still say that as Governor-General of Poland, when reports were made to you by your subordinates regarding instructions that they had received from Berlin while they were in Berlin, that they must have told you from whom these instructions were received and who these people were that gave the instructions that you refer to.

A. I think the best man who would know about this is SS Gruppenfuehrer Krueger.

Q. That may be, but I am asking what you know about it.

A. I know what has been reported to me.

Q. And what was reported to you?

A. That the Jews on the order of the Fuehrer should be transported towards the east in stages, that this plan was not discussed very often because we often administered those things ourselves and there was also a different town, Theresienstadt, which was also taken into consideration, but that had not been notified to us in writing.

Q. Now, you said that your subordinates, including Buehler, on occasion told you about instructions which had been received concerning the treatment to be accorded the Jews or other matters in connection with the Jews, and I want to know from whom your subordinates received these instructions.

A. First the word "instruction" is far too grand a word. It was not really an instruction. It was just the result of conversations and rumors. Himmler had never expressed his plans so clearly, and what I have said and done then was just the result of beliefs which were quite clear to me.

Q. The question is this: Did you or did you not take action in response to the message that you received from one of your subordinates as to what the people in Berlin wanted you to do with the Jews?

A. In no case have I had anything to do with the transportation of Jews from Warsaw, which was a clear internal affair of the SS.

Q. What connection did you have with the Jews?

A. I had no competent authority on this particular field. I had a few Jews in the castle with me as workers, but I personally had nothing to do with the Jews.

Q. You stated that after you talked with Buehler that you took action with reference to the suggestion that Buehler told you about as coming from Berlin. What were those actions to which you refer?

A. I have not said that I took action.

Q. What did you do?

A. I don't know what you mean by action, but I often talked to Dr. Fischer, and it is a fact that the transportation of Jews from Poland to different places was very bad for the economy. We have gotten in touch with the Chief of the SS, with the Oberkommando of the Wehrmacht Keitel, and the Reich Minister to prevent Jews who worked so well producing uniforms from being transported away from Warsaw. My point of view was that it was crazy to do such a thing in the middle of the war when one must have every button of every uniform. We had armament officials that came to us and begged us to leave the Jews because their factories would have to stop.

Q. What did you tell Hitler about the Jews?

A. I told him in 1940 that the special thing about the Jews in Poland was that they were a different class of people from what we had in Germany. In Germany the Jews are the rich ones. In Germany they are not manual workers; they are not people who stand in factories and work. In Germany they have been bankers, doctors, merchants. In Poland, on the other hand, the Jews are the small manual workers. They are the bootmakers, the tailors, and not only that, they are also semi-skilled workers in industry.

Q. What else was said?

A. And then I also told him that they are really quite well off, that they are very industrious and behave well, and that we cannot dispense with them in Poland because the Pole has not the nature that the German Jew has. The Jew in Poland was the man that brought the trade into the village because the transportation of the country was so very bad. There were no railways, and that was terribly important.

Q. What did Hitler say to all this?

A. That interested him but he did not talk about it further.

Q. Did you tell him about how the Jews were being treated?

A. That I could not tell him because nothing special had happened to the Jews.

Q. What happened after that?

A. The Colonel must remember that I came with very few men into a completely alien country. From the 7th of November it took me a quarter of a year until I occupied all my service posts, until all these posts were able to communicate with the central post or orders from the central post could be given to the different administrative sections. Besides I had in the country the Wehrmacht commander, who had nothing to do with me, who was not under me at all, and who was not responsible to me for any reports, and they had already been in the country since the 1st of September. The SS and police had already been in the country, as I said before. It is my personal opinion, although Adolf Hitler never told me in the course of all this time, that Himmler influenced Hitler to make a very great anti-Jewish campaign, using the reason that the Jews were guilty of the war against Germany. This of course contributed in ever-increasing measure to the more difficult problem of the Jews. The SS never allowed any of my workers to get involved in their Jewish campaigns. At first they started to gather together the Jews, saying that anyway the Jews had their own parts of the town in every town they lived, and it was then we tried through the formation of ghettos to keep things in order at least in the bigger cities. In these ghettos all Jews were to be rounded up together; they were to be under the protection of the police; they were to have their own administration there. I want to point out that the order we talked about yesterday about the forced labor of Jews, that those orders had actually never gone into effect, that the SS acted under their own orders and declared that the General-Governor had nothing to order.

Q. What happened to the Jews?

A. We already talked about the fact today that these ghettos came into their greatest difficulties, especially Warsaw, where food was concerned. And then in accordance with the general plan, the general transportation of Jews towards the east was carried out.

Q. What was your participation in that?

A. That I fought against that until the very last moment, as I said before.

Q. Then what did you do at the last moment?

A. I went to the highest authorities of the different departments in order to interest them in my opinion, but I got the decision of the Fuehrer from the Oberkommando of the Wehrmacht Keitel, who told me himself that the Fuehrer wanted the transportation of the Jews to the East carried out under any circumstances.

Q. After your opinion was overruled, what did you do?

A. I have already told the Colonel before that eight times I offered my resignation.

Q. How many Jews were killed or liquidated during that 1943 period?

A. In the rising?

Q. Yes.

A. The number has never been told to me. I once asked Himmler to show me the photos of the ghetto but that was not shown to me. Nobody could enter this territory. It was shut tightly. It had been declared a military wartime restriction, and the civilian administration was kept outside completely. I just had a very superficial report with no exact information, and whenever I had a question, I just received the answer that the question hadn't been cleared up. It was always very difficult to ask questions because the police and the Wehrmacht said, "Mr. Governor-General what have you to do with that question? You should sit in the castle and be a representative."

Q. Did you hear that more than 50,000 Jews had been killed or captured or liquidated one way or the other?

A. This number I am hearing for the first time. I have not heard any numbers but I heard it was thousands. I was also told that the losses of the German police and Wehrmacht had been very substantial.

Q. What action, if any, did you take in connection with the destruction of the Warsaw ghetto in 1943?*

A. I asked for reports from the Wehrmacht and the police, and it was reported to me that there was really a big rising with weapons, with cannons, machine guns of all kinds, that it was an internal civil war.

Excerpts from Testimony of Hans Frank, taken at Nurnberg, Germany, 10 September 1945, 1440-1720, by Lt. Col. Thomas S. Hinkel, IGD. Also present: Capt. Jesse F. Landrum, Reporter; Bernard Reymon, Interpreter.

Administration and Exploitation of Poland

Q. My question is, what was your principal duty?

A. My principal duty was in a country completely liquidated by war to establish an administration. The administration placed under my authority was in charge of the following departments: in the administration firstly, the division was the following—under the Governor General were governors and under each governor of the district there was a Kreishauptmann a title coined by me, and under the authority of the Kreishauptmann was the Polish voit (a Polish word) and each Polish voit had 10 to 20 communities under his administration. That was according to the number of the population, and all the Polish voits of one district formed, so to speak, the staff of the Kreishauptmann. The task of the Polish voits was to apply beneath them the orders coming from above and to transmit the claims from below to authorities above. That was the inner administration.

For the cities, there was instead of a Kreishauptmann a Stadthauptmann and under the Stadthauptmann there was a Polish Buergermeister. Also, I had the seat of my General Government in Cracow, and each governor in his turn had his own administration. That is what I call the backbone of the administration; and then come the Departments of Education, of Finance, Agriculture, Health. There were about 12 or 13 departments in all. And besides this administration, as outlined by me, there were in the country the following administrations which were entirely independent of and from me: the most important there were the Police and the SS. It had been said officially that the Chief of the Police was under my authority; but that was simply a personal way of emphasizing his rank was not above mine; and subsequently, by an order of the Fuehrer (which was published in a general order), the Police was entirely removed from my jurisdiction to such an extent that it had its own State Secretary, which State Secretary received his orders directly from Himmler.

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*See document 1061-PS, Vol. III, p. 781.

To mark the complete separation and distinction of the Police and the SS from my administration, no member of the Police force or SS was a member of my administration; whereas, all the officials of all departments under the order of the Governor General were being paid out of my treasury, while the personnel of the police and SS were being paid directly from and by the cash of Himmler and Berlin. So that I had not even any disciplinary authority over the Police as any chief is supposed to have. Any attempt to manage the Police had to go in the shape of a request, not in the form of an order. On the top of all this, the Chief of Police was not only a direct representative of Himmler as Chief Commissar of the General Police, but also "fuer die Festigung des Volkstums," and besides, in the question of the Jews, this system was quite impossible and I had continually to envisage my resignation as I was in continual conflict. I wish only to say that my fight with or against the Police and the SS was known throughout the whole country. It was only the Polish Emigré-government in London which did not see the picture as it was; whereas, the native Poles at home, with whom I collaborated, they saw the things as they were. It is only after three years of struggle that the head of the police, Krueger, was finally recalled. This recall of Krueger was, to a certain extent, a triumph for me as it was a symbolical proof that my policy had got the upper hand; so that the successor to Krueger, Koppe, was a rather decent person. It is evident that the reports sent by Krueger to Himmler at Berlin, and Himmler being my enemy, are for me today the most glamorous justification because in those reports I was depicted as a regular formalist, as a weakling, as a man who was not in good standing with the Poles and who did not carry out the very policy for which Himmler stood.

Q. How do you know that?

A. In my continual visits to Berlin this was told me by Minister Lammers and in one of the few interviews I had personally with Hitler—it was in 1943 in the presence of Bormann—Hitler himself made reference to those reports by and from Himmler. This conference probably took place sometime in May 1943. I again offered to resign, saying that I could not keep on in that manner. Buehler is well aware of these facts and I wish you could give him a hearing.

The economic life in Poland was in three directions: in the first place, all matters of agriculture were taken care of by the agricultural representative of my government; secondly, departments non-agricultural and non-important from the war point of view were attended to by the heads of the departments, also within my government. But while the most important part of the economy was continued by the Chief of the 4-Year-Plan, Hermann Goering, or by and from the Minister for Armaments, Goering even had the right to issue orders, which had legal force in the General Government, without consulting me.

Q. Did he ever do that?

A. This is printed in the legal publications.

Q. Did he ever issue any such orders?

A. Unfortunately, more than once. The worst of it was regarding the furnishing of foodstuff in the first two years of the war. Thus, once he asked for 500,000 tons of cereal (corn) from the General Government.

Q. Did you furnish it?

A. I did not furnish it. I had a very grave conflict with him. Goering said he didn't care whether anybody starves in Europe, but the German people ought not to starve. I furnished only a part which went to the Wehrmacht. From that time on, Goering called me "King Stanislas."

Q. Do you recall receiving an order from Goering regarding the exploitation of Polish natural resources?

A. This order was some time around December 1939, and thereupon, I went to see Adolf Hitler and I told him it can't go on. Goering wanted, at that time, that we break off every second track of the double railway lines.

Q. What did you do, in response to this order that was received from Goering, besides complain to the Fuehrer?

A. We didn't carry it out.

Q. You didn't? You didn't do anything at all?

A. We didn't do anything and what he did do, he did it with his own personnel.

Q. What did the Fuehrer tell you when you complained to him about this order?

A. Hitler sided absolutely with me. He said it was madness.

Q. Was the order ever withdrawn?

A. I don't know whether it was formally withdrawn.

Q. Isn't it a fact that Poland was exploited?

A. I should remind you that I came into the country in November 1939. At that time, there was a delegate of the OKW, Buehrmann, and he was especially in charge of transportation of the most precious machinery to Germany; and as soon as I took up my duties as Governor-General, I received from all the governors a complaint to the effect that the situation was getting impossible. Things reached a climax where we in the General Government had not a single ton of copper because all the copper had been taken away. The machinery from Polish factories had been, long before my arrival, carried off by Buermann.

Q. What about the natural resources? Let us forget about machinery.

A. Anything which was available at all or any other commodities had been carried away totally to Germany and that is why when I arrived I immediately asked for those 600,000 tons of corn which I have just mentioned.

Q. Did you get it; did you pay it back?

A. If I had not received it, there would have been a catastrophe.

Q. Did you pay it back?

A. I can't remember.

Q. Is it your testimony that those orders issued by Goering in connection with the Four-Year Plan, were not executed by you?

A. Some plans I did execute; there were some reasonable plans.

Q. Which ones, for example?

A. One of these orders of Goering was the rebuilding of the factories for purposes of armament. That was before the Minister of Armaments, Speer, was appointed; at that time, Goering was alone in charge of it. Goering was the man I feared the most on account of his enormous needs.

Q. What other orders of Goering did you consider reasonable?

A. The rebuilding of navigation on the Vistula. Of course, the question is not what Goering asked me to do in favor of the Poles; the question is, what were the needs of Goering from Poland—that's the question.

Q. The question is, you stated that some of the orders that Goering issued as head of the Four-Year Plan were executed by you because you thought they were reasonable. I am trying to find out which orders you thought were reasonable.

A. That was the general scheme of the rebuilding of the armament industry within the General Government—those were very important propositions.

Q. How many thousands of workers did you supply to the German Reich from Poland?

A. When you speak of Poland, you, of course, mean the General Government.

Q. Yes, the Government General of Poland.

A. Within those 5 years, some 500,000 Poles and some 200,000 Ukrainians.

Q. How did you recruit those workers?

A. Those workers were reported to the Labor Office and were sent as volunteers.

Q. What do you mean "volunteers"?

A. It was my hardest fight always to obtain these volunteer workers.

Q. What do you mean by "volunteers"?

A. By volunteer workers I mean those who followed an appeal, reported voluntarily to the Labor Office, stating that they were willing to work for or in Germany.

Q. Isn't it a fact that you used to receive a quota of the number of workers that were desired from you on a regular basis?

A. When Sauckel became Reich Commissar for Labor, the number of workers furnished by the General Government was already so high that he was satisfied with a very small quota of say 50,000 laborers a year. Why, that could be obtained without any further ado.

Q. You mean to say that all the Polish labor that came from the Governor-General of Poland into Germany came voluntarily?

A. Absolutely, so far as they came from the Labor Office under my authority.

Q. Well, where else did they come from?

A. Well, but the Luftwaffe was in the country, the SS was in the country, and I had to fight for years to oppose any violent measures in this respect. And to give an instance, the police once surrounded a movie and was going to deport all the people coming out from it. Well, I was fighting with the utmost energy against such methods. I myself saw those trains with volunteers for Germany and I spoke to them. I sometimes gave them gifts and saw them off to Germany. I also obtained in the Reich a report on the treatment of Poles which, at the beginning, was rather harsh.

Well, the Poles had to wear a patch with the letter "P" on it and only in 1943 did I obtain authority that this "P" be removed. I had to negotiate for some 18 months to obtain the permission to send Catholic priests to the Polish laborers, which priests had been forbidden by Himmler. In places where Poles worked, they dared to put inscriptions on the churches, "No Admittance for Poles," and such cases of sheer madness I have continued to fight against. Well, we saw the kindliness of the Church and also of the German people who didn't attach any importance to the official stuff; the Poles were well-treated by the German peasants, and they wrote accordingly to their families at home, and that again drew other Poles to Germany. There are also hundreds of thousands of Poles I had received within my General Government, some 800,000 Poles which had been sent from the Polish territory within the Reich, and it is from those Poles that I could recruit a labor force. Not exclusively from those, but also from those. But this was an additional charge for a small General Government since I didn't receive any additional foodstuffs. Those Poles were sent back under gruesome conditions and we had to set up our own sanitary establishments and equipment to take care of them.

Q. What about Maidanek?

A. What?

Q. You know what I mean. What about Maidanek, the concentration camp?

A. I gave an explanation the last time. What had taken place at Maidanek, I had heard that only from the foreign press.

Q. You are sure about that?

A. Maidanek was occupied by the Russians last summer and they had set down the conditions of the camp and made them known to the press of the world; and one day I received a visit of the Chief of Police who told me, "Here's the whole affair of Maidanek." I immediately saw the SS Gruppenfuehrer, Koppe, and told him what monstrous news I had received about happenings at Maidanek and I instructed him to proceed immediately to make an investigation.

Q. You mean to try to tell me that you didn't know Maidanek, that it existed, prior to the time of this press report?

A. Absolutely nothing. This I wish to say and that I did say under oath the last time.

Q. Didn't your assistants, those who were acting for you in the vicinity of Maidanek, didn't they know about it?

A. No. There had been a whole number of entirely closed-out camps—not only camps for Jews, but camps of all descriptions:

camps for POW's, which is the same as in Germany—the whole General Government was sprinkled with such camps.

Q. Did you ever ask anybody who was in those camps?

A. Well, I did ask and I was told those were camps for prisoners of war, camps for Germans returning from the Reich, etc., and access to those camps was severely prohibited to me or the civilian population.

Excerpts from Testimony of Hans Frank, taken at Nurnberg, Germany, 13 September 1945, afternoon, by Lt. Col. Thomas S. Hinkel, IGD. Also present: Siegfried Ramler, Interpreter; Pvt. Clair Van Vleck, Reporter.

Frank Claims Ignorance of Concentration Camps

Q. What about other concentration camps besides Maidanek? What did you know about them?

A. The SS did not construct any bigger concentration camps—I am talking about all these years—of the style of Dachau, because outside of the General Government in Upper Silesia, they had a camp in Auschwitz.

Q. Did you know about that camp?

A. I knew that the camp existed there. One passed it on the train. It was a huge camp. One could always see the barbed wire when passing on the train, and this was always considered to be the central camp for the whole eastern territory.

Q. Is it your statement that the only concentration camp that you know of in the General Government of Poland was at Maidanek and that you didn't find that out until after the Russians had captured it?

A. It had been clear to me that concentration camps had been erected in the General Government from time to time, but that they had any mentionable size, it always seemed improbable to me, because I was always told that the people from the General Government should be sent to the concentration camp Auschwitz.

Q. You have been to Lublin, haven't you?

A. Yes.

Q. You have been there numerous times, haven't you?

A. The last time I was there was 1943.

Q. In the course of your travels to Lublin, if you turned your head to the right or left, you would have seen Maidanek, wouldn't you?

A. I was in the town. I don't know that. It was outside the town.

Q. You don't seem to know very much about what happened in the General Government of Poland, do you?

A. That is right.

Q. You were only there five and a half years. You were not there very long, were you?

A. What has that got to do with it? This is no reason why I should know everything that happened in the country. It is quite impossible.

I always tried to release people, officials, that used to be Poles and had been arrested for any reason.

Q. How many did you get out of Maidanek?

A. I cannot remember. I cannot say that I ever got any officials out of Maidanek.

Q. Did you ever try to get any out?

A. I can't say with certainty that I ever got anybody out of Maidanek, not I personally.

Q. Did you ever try to get anybody?

A. No. I have never received any official report that somebody had gone to Maidanek.

Q. How about unofficial reports?

A. I didn't receive any.

Frank's "Safeguarding" of Polish Art Treasures

Q. Wasn't most of the art removed from the Warsaw gallery?

A. Not by us.

Q. By whom?

A. If anything had gone, the SS might have taken it away or the Police or the Wehrmacht, the Luftwaffe. Anybody might have entered in this time. How should I know? What we found out has been registered.

Q. How about the Cracow Art Gallery? Is your answer the same on that?

A. There we could have saved most of the things that we found there.

Q. Didn't you?

A. Yes. The most important paintings, a Raphael, a Leonardo da Vinci, and so on, had been kept.

Q. Kept by whom?

A. We kept it with the state property of the General Government.

Q. How about other art galleries in General Government of Poland?

A. The same system has been followed everywhere. One tried to get to the art objects as quickly as possible after the war had finished and safeguard them. There has been a list published about the paintings, officially, and those paintings have been then distributed in the usual way. They have been used to beautify official buildings and so on, but not the very valuable ones. The most valuable ones have always been kept together and have been safeguarded.

Q. Where were they kept and by whom were they safeguarded?

A. There were different art storages constructed that were subordinate, for the main part, to Muehlmann.

Q. I am talking about the ones that were preserved by the Governor General of Poland.

A. It has been kept in storage in Cracow. There were big cellars full of those properties.

Q. There were a lot of them hanging on the walls of your apartment too, weren't there?

A. In the whole castle.

Q. Why didn't you leave those paintings hanging in the Cracow Art Gallery instead of removing them to the castle?

A. The art gallery was locked up. It wasn't open. It had another name. It wasn't called art gallery, but anyway it is what we mean. This one Leonardo da Vinci painting had to be protected by me, mostly because of the Reich. This was one of the reasons why I collected these paintings in the castle. The State Secretary Muehlmann wanted this painting for Goering. It had already been in Berlin once, then I had a very hard fight to get it back.

Q. What argument did you use? That it belonged to you?

A. That it is state property of the General Government and that it is not private property. I think that Goering got the least of the paintings from the General Government, if he got one.

Deportation of Slave Labor from Poland

Q. How many workers did you furnish Sauckel?

A. Sauckel had come very late, comparatively. When Sauckel came along, he only asked for very few people. That I have said before. These were voluntary workers and we could fullfill that without any trouble.

Q. How about Funk? How many workers did he want?

A. Funk was generally in charge of everything that the industry in Germany needed. Altogether we delivered a number somewhere around 800,000.

Q. You mean to Funk, Seldte, and to Sauckel, all three together?

A. To all different departments of the State.

Q. As I remember your statement before, it was to the effect that 90 percent at least of this labor was voluntary; is that correct?

A. They were all voluntary. The few that wanted to try to force these people we dealt with very rapidly and we avoided this action. They wanted to start this method with us too, but we were able to avoid it.

Q. Your statement is that there were no laborers obtained among Polish workers, for work in Germany, who did not volunteer for that job?

A. Yes. Out of the General Government, out of their own free will. You can see that from the numbers involved, because even before the war hundreds of thousands of workers went out of Poland every year. I have talked to the Colonel about it. We had our work offices all over the country and things ran comparatively very easy. We even carried it through that people should be able to come back for a furlough, to the General Government. The mail situation was brought into order. Our main job was to care that those Poles in Germany should be treated decently. At first, this was very bad. At first, these Poles were looked upon as enemies. That we could notice right away because the number of the voluntary workers declined. Then we saw that they obtained priests, that the whole treatment became a more sensible one and then the people came into contact with the different firms and works, and the people there had their own interests to keep them. Towards the end everything became fine. You can see that from the many Poles who did not even want to return to Poland. There were 400,000 that did not want to return.

Testimony of Hans Frank, taken at Nurnberg, Germany, 3 October 1945, 1430-1700, by Lt. Col. Thomas S. Hinkel, IGD, OUSCC. Also present: 1st Lt. Joachim Stenzel, Interpreter; and Pvt. Clair S. Van Vleck, Court Reporter.

Pillage of Agricultural and Food Products

Q. Who had charge of establishing the quotas on agricultural products that were to be produced, or would be produced and taken from the Polish peasants?

A. That was determined by the Chief of the Four-Year Plan, Reichsmarshal Goering, and in collaboration with him by the Minister for Food and Nutrition.

Q. Was that done in a manner such as this: that is, you would be called on to furnish so many thousands of tons of a particular food, and you thereupon allocated it throughout the General Government of Poland?

A. We attempted to handle it. A drastic example of that sort was, for instance: in the year 1942, Reichsmarshal Goering simply ordered that the General Government of Poland was to provide 700,000 tons of foodstuffs, and, in addition, we were supposed to feed the military occupation forces in the General Government of Poland. I thereupon declared immediately that it was absolutely impossible and in negotiations, that lasted between three and four weeks, I was able to reduce the requirement to a basis that was more reasonable.

Q. To how many hundreds of thousands of tons was it finally reduced?

A. It was reduced to 560,000 tons. However, these were not passed on to the Reich, but they were also counted toward the requirements for the military occupation forces within the government.

Q. In other words, a total of 560,000 tons of foodstuffs was to be supplied to the Wehrmacht and to Goering?

A. Yes. However, I should say, about 80 percent, I should estimate, remained in the country and was consumed by the military.

Q. Taking the 560,000 tons as an example, did you thereupon distribute to all the agricultural areas of the General Government of Poland a certain quota, or part of that 560,000 tons? That is, each section had to produce a certain percentage of the requirement?

A. The harvest, naturally, was much higher than 560,000 tons. Let's assume the harvest of that year might have been something like 1,800,000 tons.

Q. Is it not a further fact that it was positively prohibited by the German authorities that any extra nourishment for Polish children be furnished?

A. That was tried, but it never succeeded. The German Reich, under the guidance of Goering, always assumed that the Reich comes first and everybody else comes afterwards. Thus we have taken a lot of measures without any regard to the Reich. That holds true especially after 1942, when this awful decree came out, and ever since then we made ourselves rather independent.

Reasons for Polish Hostility toward Germany

Q. Didn't you report in June, 1943, that one of the measures, which had led to a substantial deterioration of the attitude of the population of the General Government of Poland towards Germany, was mass arrests and mass shootings by the German police, in accordance with the system of collective responsibility?*

A. I certainly am convinced that I did not do that. In general, my protests were always against the measures of the police.

Q. With further reference to this report of 19 June 1943, did you not state therein that one of the measures which had led to a substantial deterioration of the attitude of the population of the General Government of Poland towards Germany was the confiscation of a major part of the Polish estates and the expropriation of Polish peasants?

A. That referred to one very specific case, to which I made reference then. In a certain portion of the southern district of Lublin, overnight, so to speak, the Police and the SS had chased out the Polish farmers, and had brought in German settlers from somewhere in Russia, whom they wanted to settle in this area. We had to make the most frightful efforts in order to get new homesteads for these people in some other portion of the General Government. There was the same thing when the Army increased its combat training terrain. They would merely take over a village and leave to us the responsibility to provide new homes and new homesteads for the people.

Q. In line with that, didn't you state, further, in that report, that one of the causes for the deterioration in attitude towards the Germans was the encroachments that had been made upon industry, freight, and private property?

A. Certainly, it happened that a train was passing, and then the police and the Army would come and clean it out completely.

Q. How about industry and private property? Did you not also set forth those encroachments on those as contributing to this deterioration of feeling towards Germany?

A. Encroachments? It wasn't exactly anything in the way of expropriation, but rather a sort of temporary occupation of an industrial concern, if the industrial owners were in the occupied territories; that was more or less along the same lines as what was being done by the military governments everywhere, and even at present in Germany. For instance, in the case of the Hermann Goering Works, they would merely come in and take over a certain industrial establishment that possibly belonged to the General Government, and in that case there would be long negotiations in order to safeguard the administration of this factory independently. I recall one incident where an industrialist came from the Reich and offered me 3,000,000 zloty for an industrial establishment that would have been worth 30,000,000 zloty, and naturally I balked at that sort of an arrangement.

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*See document 437–PS, Vol. III, p. 396.

Q. Included in these measures, which had led to a substantial deterioration in the feeling towards Germany, was the extensive paralysis of cultural life. Do you remember that?

A. That was my continuous fight. I, for instance, endeavored to reopen the theaters, and I created a Polish Philharmonic Symphony, and I endeavored to revive all these cultural efforts, but the Reich Propaganda Ministry opposed that and continuously tried to curb all cultural enterprise. That became particularly acute when the theaters and the concerts were closed in Germany and, naturally, one demanded the same thing from me in the General Government, and I turned it down.

Q. Do you remember including in these measures also the closing of middle schools and universities and the limitation, even exclusion, of Polish influence in the civil administration?

A. I have always endeavored to create, parallel to the government of the Governor-General, a native Polish government, and this was at all times stopped by the Berlin government. Probably, the Colonel was referring to that because actually there were about 200,000 Poles in the government, in the civil service. But no doubt the Colonel was referring to the higher sort of administration, to the effort of creating a separate government of Poles.

Q. Do you remember including in those measures, the fact that Catholic influence had been restricted, including the closing and taking away from the Catholic Church monasteries, schools, charities, and various institutions, in many cases with only a moment's notice?

A. Wherever I could, I would stop these things, but the Colonel must remember that whenever I tried to stop any of these efforts, then one would answer me saying that the same measures had already been taken in the Reich, and that it was merely an effort to create a system of legislation in the General Government parallel to the Reich. For instance, the sanctuaries of Poland, in order to protect them, I had placed under my personal protection. For instance, the monastery of the Camaldulensian monks and the sanctuary of Czenstochawa were under my personal protection, but on the other hand, one must realize that when the military entered into a city, then the monasteries or the schools or the churches would immediately be taken over because they were the only stone buildings. Everything else would be of wood. Then my efforts would be to try to protect these things and to take them away from the military; naturally, I had not always success.

Misconceptions Regarding Frank's Regime

A. The fourth was the problem of the police and of the shooting of hostages.

Q. In what way are these things exaggerated, that you have stated in the report were exaggerated, that is in what I am interested.

A. It was exaggerated in the sense that somebody could derive from this report, the idea that all great estates had been eliminated, or that every day mass recruitments of forced labor took place, or that every day there were mass arrests and mass shootings, and that naturally was not true.

Q. It did happen, though? They did happen on occasion, did they not?

A. Naturally, those things did take place, but the Colonel should also remember at all times that for the SS, the term "General Government" did not exist. The SS called itself "SS Command East".

Excerpts from Testimony of Hans Frank, taken at Nurnberg, Germany, 8 October 1945, 1545-1615, by Lt. Col. Thomas S. Hinkel, IGD. Also present: Bernard Reymon, Interpreter; Pvt. Clair Van Vleck, Court Reporter.

Introduction of Compulsory Labor Service

Q. Did you ever hear of an organization called the Baudienst?

A. Yes, I do remember it.

Q. Tell me what you remember about it.

A. It was in the district of Cracow.

Q. What kind of an organization was it, what did it do, and how did it get started? Give me all the details as you can remember concerning it.

A. The immediate task of this organization was to get rid of the rubble that was caused by the war. It became a general compulsory service, but I can't remember the details. It was an idea of mine to introduce labor service similar to that which existed in Germany. In Germany it is called the compulsory labor service.

Q. Do you recall issuing a decree pertaining to this Baudienst?

A. Well, such a decree must be somewhere, all you have to do is show me the decree.

Q. I would like to see what you remember about these things.

A. The Baudienst was a very useful organization for the country itself.

Q. Do you remember extending the operations of the Baudienst on April 22, 1942, to all Polish inhabitants, between the ages of eighteen and sixty?*

A. The Baudienst? That much I don't remember, that I would like to see. We set up that service exactly on the same lines as the compulsory labor in Germany. The German boys served in the German labor service.

Q. By the way, was it necessary to set up the Polish Labor Service along the same lines as set up in Germany?

A. I don't quite understand the question.

Q. My only question is this: Were you required to do the same things in the General Government of Poland, that were done in Germany?

A. The Reich had asked for it without interruption.

Q. Had asked for what without interruption?

A. Had asked for it all along.

Q. Asked for what?

A. Well, in Germany the whole population was required to work, and naturally they had to do the same in Poland.

Q. My only question is this: Were you directed to issue the various orders, or did you issue them of your own volition, in order to take care of conditions that you thought existed?

A. Those things were always required either from me or my officials, whenever they went to Berlin.

Q. Did you ever receive any written directives from anybody telling you to put out the particular orders that you did put out?

A. Yes, from Adolf Hitler, from Goering, or from the Reich Labor Fuehrer, but it was always implied that if you wish for something you have to do it yourself.

Q. Were you directed to put out these orders, or did you derive that from something that was said to you by somebody, either in Berlin or elsewhere?

A. Yes, you may put it that way.

Q. You have told me that before; what I am interested in is whether you received a directive to put out the particular orders that you did put out, or whether you put those orders out because you thought, that by so doing, you would be in conformity with what you thought somebody wanted?

A. They were not simply desired, but they were required. That is one of the main reproaches that was made to me when I was in Berlin. They kept on saying, "Why don't you have the population work?"

Q. Who directed you to put out the decree of October 26, 1939?**

A. What is it about?

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* Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

**See document 3468-PS vol. VI, p. 169.

Q. You know the one that did what you called, "introduced an obligation to work"?

A. That was a personal order by and from Adolf Hitler, who wanted the population to be called to work right away and particularly in connection with the very heavy damages in that territory.

Q. When did Hitler give you that order, and by what means?

A. On September 17 of '39, already.

Q. How did he convey the information, by letter, by word of mouth, or how?

A. Orally.

Q. Who else was present at the time that this direction was given?

A. Nobody.

Q. Just the two of you?

A. Well, Goering may have been present.

Q. Anything might be, we know that. Was Goering present, or wasn't he?

A. No, he was not.

Q. In other words, just you and Hitler were there; is that right?

A. Yes.

Q. This order of 14 December 1939, by which the district governors were given discretion to extend the old order of October 26 to juveniles between ages of fourteen and eighteen, who gave that order?*

A. That was an order, which had been given in a general way from Berlin that was a measure taken in Germany with regard to the youth in Germany.

Q. By whom was the order given in Berlin and in what manner was it communicated to you?

A. It was a circular letter of the Minister of Labor.

Q. It was a written document; is that right?

A. It might have been also from the Four-Year Plan, but it was a written document.

Q. What about the order of 13 May 1942, which stated that all Polish inhabitants, regardless of age or sex, could be called up for compulsory labor; did he give you an order to issue that decree?

A. I really cannot say. Then it must be from the same channel.

Q. Was it orally or was it in writing?

A. It most certainly has been in writing.

Q. Is that your best present recollection?

A. No, I have not any.

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*See document 3468–PS, vol. VI, p. 169.

Q. I refer you to this order of 22 April 1942 regarding the Baundienst?*

A. Well, this is a sample of the German compulsory labor service.

Q. Do you recall issuing that decree?

A. Yes.

Q. Who gave you instructions to issue it?

A. That refers to a previous order of the 1st of December. It is not a special decree, it is simply an official extension of the old decree.

Q. My question still remains; who gave you the directive to issue that order?

A. Well, it came from the same channels.

Q. How did it come to you, orally or in writing?

A. It certainly must have been in writing.

Q. My question still remains: Were there any people taken from the General Government of Poland into the Reich for labor purposes that were not taken on a voluntary basis?

A. That is quite possible in connection with those departments which were not under my authority.

Q. Which departments were not under your authority with respect to the labor?

A. Always the same departments—the Wehrmacht, the Police the Four-Year Plan, the very important Ministry of Transportation, and the very important Ministry of Munitions, who had the whole industry.

Q. Didn't these people operate through you?

A. Unfortunately no, they always operated outside. I want to cite an example so that you can see how things were happening. A factory at Czenstochowa, which was subject to the Four-Year Plan, had one day been surrounded by forces and the whole personnel was rounded up and was going to be sent to the Reich. At the eleventh hour our intervention prevented it. To preclude the possibility of those ever-recurring interventions, it was necessary to issue those decrees.

Q. Was Lublin within your General Government?

A. Unfortunately, yes.

Q. Do you recall ever receiving any communication from Sauckel with regards to Lublin?

A. No.

Q. What happened at Lublin that particularly sticks in your memory?

A. You probably mean in point of view of labor?

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*See footnote p. 1393 of this volume.

Q. Yes; or the people as a whole.

A. The most terrible thing I remember is the day when the peasants were driven from their homes.

Q. When did that happen?

A. Well, I don't remember, it might have been in '42. It was the southern part of the Lublin district.

Q. Were you there at the time?

A. No, I was not.

Q. You knew it was going to happen, didn't you?

A. No. I heard of it through a report. That was the work of Globocnik, a man who has been mentioned so often.

Q. Who is he?

A. I don't know him any more. He was an Austrian.

Q. What caused this driving of people from their homes in Lublin?

A. As a letter subsequently came, it was an order of the Reich Fuehrer SS, to settle there the racial Germans. We had tremendous work in order to shelter somewhere those unfortunate beings.

Q. What was your participation in that?

A. I just told you. I protested this madness.

Q. To whom did you protest?

A. Himmler.

Q. When did you protest?

A. The very day when I learned it. I don't remember the date.

Q. How did you protest?

A. Passionately.

Q. How? By letter or orally?

A. By a phone message, or teletype and by letter. That matter kept us busy for months.

Q. To whom else did you protest?

A. Well, the competent person was Himmler, as Reich Commissar.

Q. You didn't protest to Hitler about this one, did you?

A. Perhaps Hitler had received the protest from me in a general declaration. Yes, I remember I gave it to Lammers.

Q. Isn't this one of the occasions you offered to resign?

A. I was continually on the point of resigning.

Q. I am talking about this particular occasion. Did you offer your resignation then?

A. It is possible, I don't know. I would like to refer to the report to Hitler, which I read the last time to the effect that it was quite impossible to treat the population in such a manner. On top of it, the Wehrmacht had evacuated villages in order to perform their drilling and exercises. The Luftwaffe and the SS simply wanted to evacuate villages, and all they had to do was to see how we could take care of those unhappy populations.

Excerpts from Testimony of Hans Frank, taken at Nurnberg, Germany, 2 November 1945, 1430, by Lt. Col. Thomas Hinkel, IGD. Also present: Alfred Booth, Interpreter; John J. Murtha, Reporter.

Support of Anti-Jewish Congress in Cracow

Q. Do you recall plans being made at one time to hold an anti-Jewish congress in the Government General of Poland?

A. Yes.

Q. What do you recall regarding that?

A. If I recollect correctly, a representative of Rosenberg had been in Cracow and wanted to hold such a congress. We ourselves had nothing directly to do with such a congress; it was only to take place in Cracow.

Q. Did you offer to participate in it?

A. Offered? I would have been present, of course.

Q. Well, did you ever communicate with Rosenberg that you would participate in this Congress?

A. With his representative, not with himself. He invited me. The affair was to be conducted by Rosenberg, if I am not in error. And the representatives of all the anti-Semites of the various countries were to be invited.

Q. As a matter of fact, you offered to pay part of the expenses, didn't you?

A. Yes, because I promised myself a great gain from this. Many people from all over were to come. It would mean a sort of boom for Cracow.

Excerpts from Testimony of Hans Frank, taken at Nurnberg, Germany, 14 November 1945, 1430-1520, by M. Mounier, French assistant prosecutor. Also present: Leo Katz, Interpreter; Wilhelmina Frey, Court Reporter.

Economic Spoliation of Poland

Q. [In French] Didn't you exercise the functions of presidency in the Four-Year Plan program?

A. In March 1940 I took over the functions of a delegate for the Four-Year Plan for the interior of the Governor Generalship. But the matter concerned here had already taken place and there were emergency measures which I had to take. But that which is concerned here, this question, was already obsolete. I would like to say that the measures taken by the Governor General were to put the economy on its feet again as fast as possible and for that purpose we required the resources of the country and for this reason these orders were issued. You have to bring into the Governor Generalship here all the things which are necessary for the conduct of the war. Furthermore, I had the biggest personal interest to stop the further lootings of the country. To begin with, then, existed this plan to demolish the economy. There were commissions under Goering, who were functioning in the country who took away resources such as iron, copper, and other material, railroad tracks, and in the middle of these actions the General Government was erected, this civil administration. I protested against these methods and said: "The country is going to the dogs with these methods." In January 1940 I had a detailed consultation with Hitler about these questions; and as a result the course was changed to erect a home economy within the Governor Generalship, an autonomous economy within the country. If you think of what has happened, you must understand that these orders had as their aim the reinstating of the economy; because the country itself had been looted and all its material resources had been taken away. In the course of the years, a change in attitude was experienced because people admitted the necessity of industrial factories and natural resources. For instance, the petroleum was extremely important for the war; and the factories had to be reinstated immediately. It was my duty to take care that this should not be done by private organizations in the Reich, and done by agencies of the Governor Generalship. I was completely dependent upon myself in this matter. I had to build up a monetary system and I did not have a single piece of gold. Therefore I had to take care that the fiscal system should be reinstated. That is also applicable to the objects of art. In the Reich there were several groups active, who wanted to get these art treasures away from us and I took care immediately of the registration of all objects of art; that they were registered officially, that they were declared state property or state-protected property to stop their being taken away even by the governor of the Reich. I had them recorded in a big book which was distributed to all authorities which were competent; so that any object of art could not be confiscated or seized by one of the outside agencies.

Q. What were your relations with your authorities and your administration and the Einsatzstab Rosenberg and other organizations?

A. It was to prevent the activity of this Einsatzstab in the governorship that I took care of the registration of these things.

Q. Do you know that, for instance, complaints were made to the head of the Einsatzstab that Goering took many objects of art for his personal use?

A. But not out of the governor generalship. He did not get anything from us; nothing came from there. Nothing was taken because it was secured by the state.

Q. What you have told us so far is the theoretical foundation. In practice you suceeded to secure and to prevent the confiscation of these properties?

A. I know nothing about what happened during November and October 1939, but I saved the most important pieces of art from the moment on when I was able to, and it was possible in the country, as far as I myself was concerned.

Q. What happened before October or November with regard to this looting?

A. I do not know, but from that moment on I am sure I guarded and covered everything. That was October and November 1939. I would like to cite an example where we were too late, where we did not succeed any more. It concerns the Veit Stoss altar in Cracow. The SS and Police and Wehrmacht had, before we built up our administration, already dismantled this altar and taken it away and this altar was taken away by the authorities. I personally protested to Hitler. He sent to me the mayor of Nurnberg, Liebel, who went to Cracow by order of Hitler, and the assistant of Hitler, Mr. Brueckner, went personally to Cracow and Brueckner telephoned he wanted it over here. Even in 1944 when I saw Hitler for the last time I tried to recover this altar. To get back—***possessors of these treasures were spread all over the country and it was difficult to register them. Where collections were centralized in one place we left them as they were. For instance the famous collection of Count Potocki. That was the most important one of our collections in Poland. For the economical matters, I wish to say something. Machines were taken away which we had no use for in the Reich. Representatives of the air force came and went to Radom and got the best machines away from the factories and left the empty space to us, and it was to prevent this that it was absolutely necessary to formulate a fiscal law within the country. Towards the end we had more than 600,000 workers in the factories which were under our control. So that in the course of the years a big industry was able to reestablish itself. It is very difficult to build up a little order out of chaos.

Q. You certainly know the ROGES, Raw Material Trading Association (Rohstoff Handelsgesellschaft); can you explain to us how this association operated in the General Government?

A. I do not know how to explain it. I do not know anything about this ROGES. All the raw materials were taken away by the Four-Year Plan by a Wehrmacht organization and the head of this organization was a General Buermann. He took care of these things, and to oppose him, I took the necessary measures. That was more difficult because he was a Wehrmacht general. This organization never had any official relations with me. I only heard talk of General Buermann and his staff. This association seems to be a little later, perhaps in 1939 or 1940. It had not yet been established. Presumably this was an association which took care of these matters and it seemed these things came under the Four-Year Plan administration, and it may have been part of the Four-Year Plan.

VIII. WILHELM FRICK

Testimony of Wilhelm Frick, taken at Nurnberg, Germany, 1030-1230, 6 October 1945, by Mr. H. R. Sackett. Also present: Capt, Jesse F. Landrum, AGD; T/5 Gunther Kosse, Interpreter.

Decrees for Persecution of the Jews

Q. What was the purpose of requiring Jews to deposit their stocks, shares in mines, bonds and similar securities in a bank?

A. So they would not own part of any business.

Q. It also was just a preliminary measure to take the property away from them, wasn't it?

A. These were preliminary measures so they could not be active any more; they could not vote in any directors' meetings, and so on. But I had nothing to do with the execution of this law. This was all the business of the Ministers of Finance and Economics.

Q. But if you signed the law, you approved of it being executed by the Finance Minister, didn't you?

A. That goes with the law.

Q. Your answer is "yes"?

A. Yes. I want you to know once and for all I am responsible for anything that is signed by me.

Q. This law tended to deprive the Jews of their private rights as well as their political rights, didn't it?

A. This only concerns separate economic affairs; it had nothing to do with political affairs.

Q. This is another one of those situations you really didn't believe in but you signed and assumed the responsibility rather than resign?

A. There was nothing I could do. Even if I would have tried to resign, Hitler would have said, "you stay." Then if I said I didn't want to stay, then I would have been a rebel.

Q. And that is why you stayed, is that right?

A. Because there was nothing else to do for myself; I was in it and had to sign it; I couldn't get out of it. You could not convince the Fuehrer of anything opposite; he had his own ideas about it and he stuck to it.

Q. By signing such a law as this you led the public to believe that you were wholeheartedly in favor of it, didn't you?

A. Naturally, that I agreed with it.

Q. Weren't you thereby really deceiving the people of Germany?

A. You can't actually call it deceiving. You might be of different opinion to the Fuehrer but you cannot get through with the ideas; there is nothing you can do.

Q. Didn't it have the effect of a lot of your friends and political supporters believing you were for something when you really weren't?

A. You can only concern yourself with the signature itself; and that's what the public believed in. What went on within me, that only concerns me and myself and nobody else knows about that.

Q. Then you wanted the public and your friends to think that you were for it, even though you weren't?

A. I wanted the public to believe that the cabinet favored the policy a hundred percent and holds the opinion of the Fuehrer.

Q. The reason I am asking some of these questions is that it is difficult for me to understand that you, with a legal background, can say one thing to the public and not really believe in it.

A. You should have been present in the whole leadership of the government at that time. I believe it's very hard for an American to think himself into a setup the way we had it at that time; it was a whole new system.

Q. To my way of thinking, it is absolute dishonesty in government.

A. Yes, it became more and more dishonest as time went by because the men who were actually responsible for the leadership of the government were bypassed and their jobs given to men who did not know what responsibility means. Actually, it would not have made any difference if I would have signed the law or not because the Fuehrer would not be influenced by my signing or not signing the law and he would have made it legal anyway.

Q. Then, on 6 July, 1938, there was a law passed by the Reich Government listing certain businesses that Jews could not engage in, such as real estate, etc.*

A. Is that also a law from 6 July, 1938? I don't remember exactly any more but it must belong to the economic sector. I think it is a law that Jews were not allowed to be active in leading positions any more.

Q. That was part of the Party program, wasn't it?

A. No, that is not in the 25 points of the Party program.

Q. Well, it was part of the government program at that time, wasn't it?

A. It was not a program of the government because I don't think in 1933 there was anybody who thought it would take such a development. All this happened step by step. The measures taken against the Jews increased through happenings like I mentioned before, Gustloff, vom Rath, and so on.**

Q. It was part of the government program in 1938, was it not?

A. You could not call that a government program; it just was the wish of the Fuehrer.

Q. Well, it was what the government did in 1938, then, wasn't it?

A. It was the execution of the wish of the Fuehrer.

Q. What do you know about the decree imposing the atonement fine on the Jews of one billion Reichmarks?

A. That's the atonement decree, I remember, but I don't remember exactly any more what it was caused by, whether caused by the killing of Gustoff or the affair of Rath. I don't think this law was signed by me. I think that was the affair of the Minister of Finance.

Q. The cabinet discussed it, didn't it?

A. There were no more meetings of the cabinet after 1937.

Q. Before this fine was levied, it was talked about between you and other cabinet members outside of cabinet meetings, wasn't it?

A. This was, but it did not happen too often that members of the cabinet met socially.

Q. At the time at least you thought it was a good plan to levy this fine on the Jews, didn't you?

A. I probably agreed upon it if my signature is on that.

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*See vol. I, pp. 980-981.

**Wilhelm Gustloff, a Nazi propagandist in Switzerland, was killed by a Jew in February 1936. His death was seized upon by Hitler as the occasion for a violent attack in Jewry. Eduard vom Rath, Third Secretary of the German Embassy in Paris, was murdered on 7 November 1938 by Herschel Grynszpau, a young Polish Jew. This incident served as the pretext for a vast pogrom throughout the Reich, ordered by the Nazi government. See documents 374-PS, vol. III, p.277; 3051-PS, vol. V, p.797; 3058-PS, vol. V, p.854.

Q. Whether your signature is on it or not, at that time you thought it was a good idea, didn't you?

A. I don't know if you want to call it good; it was a personal measure.

Q. You thought the Jews should be punished as a group because of what had taken place, didn't you?

A. That's not a question of whether I thought it good or not, it was ordered by the Fuehrer.

Q. Well, can't you say whether you favored it or disfavored it?

A. When this draft went through me or my office and I did not oppose it; I probably was in favor of it.

Q. This really was the culmination of a plan to take the Jews' property away from them, wasn't it?

A. To take their property away from them and to have them retire.

Q. In other words, in sequence, there were laws fixed to require them to register their property, then to pledge certain of their property, then finally an enormous fine was levied taking away a great part of their property, is that true?

A. The money they had to pay was a punishment; but the property that was taken away from them, they got some pay for that and, therefore, they were able to retire and live from that money.

Q. But this was one method of not having to pay for all the property, wasn't it?

A. The punishment was an individual affair.

Q. And this fine was levied because some Jew had allegedly assassinated a German in Paris, isn't that the case?

A. That was the sense of the general punishment. It was said that all Jews were responsible for the killing.

Q. You didn't protest, did you?

A. No.

Q. So you signified your approval, didn't you, by not protesting?

A. Well, like I said before, it would not have made any difference if I would have signed it or not, it would have been done anyway.

Q. I understand that, but by not protesting and going along with the program, you signified your approval, didn't you?

A. If I had not done it, I probably would have ended up in the concentration camp next day.

Q. But my question is that you did subscribe to it by not dissenting. You can answer that "yes" or "no."

A. Naturally, I did not object because if I had objected to it, I probably would have ended up in the concentration camp.

Q. Did you think it was just to levy a heavy fine on some woman here in Nurnberg, for example, that didn't even know this Jew that was supposed to have committed murder?

A. I would not have made such a law. You are right: You cannot make anybody responsible just because he belongs to the same idea.

Q. In other words, you didn't think it was just, did you?

A. I probably did not agree with it inside of me. My activity in this whole affair was probably very passive; all I did was sign.

Q. In 1941 you were a member of the Ministry for the Defense of the Reich, were you not?

A. Since 1939.

Q. Yes. And do you remember the decree that was issued by the Ministry on 4 December, 1941, and signed by you, with reference to the treatment of the Poles and Jews in Poland?*

A. That doesn't come under the laws any more.

Q. This is a decree of the Ministry for the Defense of the Reich, issued 4 December, 1941, and it has reference to treatment of Poles and Jews in Poland; do you recall such a decree?

A. Only as far as the treatment concerning the law was concerned, if they were brought up before a court.

Q. I hand you a copy of the decree, which is signed by you, and ask you to look at it and see whether it refreshes your recollection (hands witness a document).

A. That only concerns Poland and southeast Prussia. That is only a territorial rule and that does not concern all of Germany.

Q. Well, the purpose of that decree was to set up some special judicial procedure for occupied territories in Poland, wasn't it?

A. A new judicial procedure was founded according to the situation as it was existing at that time.

Q. In other words, this decree created a special judicial procedure for Poles and Jews in Poland different from the judicial procedure in Germany proper?

A. A special procedure for Jews and Poles in these territories.

Q. And the rules of procedure were much more harsh and severe than they were in Germany, weren't they?

A. Because from the experience that these people were the ones who committed these acts. In charge of all this was the Minister for Justice, but since he was not represented in the Defense Ministry, I just took it over to bring it into this office.

Q. This decree provided for the death penalty for Jews and Poles for any act of violence against the Germans, didn't it?

A. This was done to give a possible protection to the Germans because there were always fights between the Germans and the Poles.

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*Document 2746–PS, Vol. V, p. 386. R–96, Vol. VIII, p. 72.

Q. Well, the law does so provide for such a death penalty, doesn't it?

A. Well, if it is in that law, it must be.

Q. Well, look at it and see if it isn't in it?

A. (Witness looks over document) Well, this is for any acts of violence against any Germans or against higher German authorities.

Q. The law also provides that the death penalty can be meted out to a Pole or Jew for having any anti-German sentiments.

A. What do you mean?

Q. By that I mean by making statements that he is opposed to Germans he can be shot and killed, can he not, under this decree?

A. I am not informed about the details of this decree.

Q. Let me ask you this: It also provides that a Jew or Pole can be shot for tearing down any sign that is posted by a German, does it not?

A. There were special measures taken for the safety of the German people.

Q. Well, you consented to and signed a decree which approved shooting a person for tearing down a sign off a wall, didn't you?

A. In this decree (indicating document)?

Q. That's right.

A. It would have been an act of sabotage.

Q. Don't you think that's a pretty severe penalty for tearing down a sign that is posted on the wall?

A. At that time it was still during wartime.

Q. No, but this was civil administrator's regulation, by the department of Interior, generally, under this decree, wasn't it?

A. This was handled by the Minister of Justice.

Q. The military government did not have to have any law to shoot a man if they wanted to; they just shot him. This was a civil administration, wasn't it?

A. It was not time of war any more but probably the situation was not considered very steady and, therefore, some kind of protective measure had to be taken.

Q. Well, you favored a law providing that if a man tore down any kind of a sign, he could possibly be shot for doing so, is that right?

A. Where is that written about the sign?

Q. (Interrogating officer indicates section of document to witness who reads it.) Did you subscribe to a code of justice that a Jew can be shot for tearing down any sign that is posted?

A. You must consider that as a semi-wartime measure.

Q. Well, you subscribed to this sort of decree under the circumstances that existed in the civil government in the territories at that time, didn't you?

A. Naturally, that was an exceptional decree.

Q. This decree also provides with reference to judicial procedure that Poles or Jews cannot object to a judge because he is prejudiced.

A. That is possible; that they may not refuse a judge.

Q. In other words, you subscribe to a code of justice that provides that even though the judge is prejudiced you would be tried by him anyway, is that right?

A. Because these were exceptional times it was said that no one can refuse a judge.

Q. Under the times that existed then you thought it was fair to have a Jew or Pole tried before a judge who was already prejudiced against him?

A. During times of war you don't have time to refuse a judge.

Q. But this was the civil administration of these territories after the war was not in progress in Poland, was it not?

A. The war was not over; only Poland was beaten at that time.

Q. There was not any fighting going on in Poland in 1941, was there?

A. There was actually no more war but just because such a law was passed, you cannot say that everything was not quite—

Q. Assuming that would be true, you still think that it is a fair and judicial code to have a trial before a judge who is prejudiced?

A. In such cases it can't be done any other way, and I probably would not have signed any such decree if I saw it could be done in any other way.

Q. Why couldn't a law provide that you pick an impartial man to try Jews?

A. It is not said that the jury could be prejudiced; it's only done to prevent a sabotage so that the accused could not refuse one judge after the other.

Q. Well, if the defendant could show that the judge was prejudiced, don't you think it would be right for him to have an impartial judge?

A. If actually such a prejudice would exist on the side of the judge, I think the judge would not agree to handle that case.

Q. But he didn't have to refuse to act under this decree, did he?

A. It was up to the judge then.

Testimony of Wilhelm Frick, taken at Nurnberg, Germany, 2 October 1945, 1435-1655, by Mr. H. R. Sackett. Also present: T/5 Gunther Kosse, Interpreter; S/Sgt. Horace M. Levy, Court Reporter.

Frick's Part in the Reichstag, and Views on Jewish Rights

Q. After Hitler got out of jail in 1924, from then on to 1933, you saw him quite often, did you not?

A. Yes, I saw him, because I was a member of the Reichstag.

Q. When were you made Reichsleiter of the Reichstag?

A. At the Party meeting in '33. I was Reichsleiter in my capacity as leader.

Q. Leader of the Party faction in the Reichstag?

A. The Party was represented in the Reichstag by a faction, and I was the chairman of this faction, and as such, I was the Reich leader.

Q. Well, as I understand it, you were the leader of the Party in the Reichstag in 1933, and as such, you were called "Reichsleiter."

A. As such, the Fuehrer gave me this title.

Q. Were you not the leader of the Party in the Reichstag, prior to 1933?

A. My connection with the Party started in 1924, when I was elected to the Reichstag. Even though the Party was not allowed at that time, up to 1925, the people who elected me to the Reichstag were former members of the Party.

Q. My question was, prior to 1933 were you not considered by the Party as its leader in the Reichstag?

A. Only in 1933, the Fuehrer said, "In order to give you a position in the Party, I am going to make you the Reichsleiter." The faction was a body by itself. I had a special position in the Reichstag. I always consulted Hitler and asked him about the outlines, and what he wanted to have represented in the Reichstag.

Q. That was prior to 1933, to which you are referring now?

A. That was before '33. I was leader of the faction after the elections in '27. In 1927 and '28, we did not have the Voelkische Arbeitsgemeinschaft (People's Working Community) any more; we only had the National Socialist Party. We were 12 members in the beginning.

Q. How many times were you elected to the Reichstag altogether?

A. Since 1926, I was elected every time.

Q. And how often were elections held?

A. In '24; and then maybe again in the fall of '24 or '25; and then maybe there was an election again in '27; from '24 to '33, there were about four or five elections; and then after '33, there were again about four elections. My task also was to choose the candidates for the party. I did all this in the name of the Fuehrer.

Q. How did the Fuehrer decide upon who were going to be candidates?

A. We made a list of prominent members, such as Gauleiters, and so on, and gave them to the Fuehrer. He approved of them, or sometimes even added some names.

Q. Did you assist these people in their campaigns for office?

A. There were special representatives of the Party, who prepared the campaigns according to their own territories.

Q. Were you in charge of this?

A. I had to make the preparation for the others. The lists had to be brought to the election commissioner, and so on. In September 1930, after the elections, we had 107 members instead of 12.

Q. How many members did you have in December 1932?

A. There was another election in July '32, and then we had about 230 members.

Q. And that was out of a total membership of how many, did you say?

A. There were more than 500 members.

Q. As I understand it, in the early days of 1923, you were not very close to Hitler, but by 1933, you were one of his close advisors; is that right?

A. Naturally, because the faction in the Reichstag grew larger and larger. Therefore, I had to get to know him better.

Q. And it was through the Reichstag and through you that Hitler decided to try to come into power, was it not?

A. In a legal democratic way, according to the rules of the Weimar Republic.

Q. When was it that Hitler first preached anti-Semitism?

A. Shortly after the Raeterepublik in Munich.*

Q. To what year are you referring?

A. It was already in the program of 1924.

Q. On many occasions you talked with Hitler about the Jewish question; did you not?

A. During these election campaigns, the Jewish question was not important.

Q. Wasn't the Jewish question mentioned in the campaigns?

A. Naturally, because it was a point of the Party program.

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*The Raeterepublik was the name applied to the brief government formed by the Communists in Bavaria after the 1918 revolution.

Q. Well, in general, what was said by the Party speakers on the Jewish question, prior to 1933?

A. It was said that the influence in politics by the Jews is a bad one, because the Jews were always considered by the people as a foreign body in the German Government. This also could be seen in the Weimar Republic, because many Jews were active in prominent positions, as Ministers, and so on.

Q. Well, the Party opposed the Jews whether they were Communists or not; didn't they?

A. That is a question of race.

Q. Well, I don't know whether I understand you or not. Let me ask you this: Was it your feeling that the Jews should not be entitled to have political rights, but all other constitutional rights that they were guaranteed by the Weimar Constitution, they should be allowed to keep?

A. The freedom of speech is not a political right, to be compared with the election to the Reichstag, for instance.

Q. And you thought that Jews were entitled to freedom of speech; did you?

A. That they should not be treated any differently in that respect than the other German citizens.

Q. How about their freedom from arrest, search, and seizure?

A. Exactly the same as the others, that is, a protection of personal freedom.

Q. Why is it you distinguish so much between the rights of the Germans and the Jews to political freedom?

A. There is the question of what is the right of the citizen of Germany.

Q. You don't think the Jews should be entitled to be citizens?

A. They should not be allowed to be a citizen, since this is limited only to people of German blood, just as any foreigners are not allowed to be citizens.

Q. But the Party and Hitler advocated the taking away of their property rights as well as their political rights, did they not?

A. That was not the case from the beginning on.

Q. When did that become the case?

A. I believe it was only done in '37, when the first laws in that respect were passed in the economic field.

Q. And in 1937, also, you changed your mind about the right of the Jews to own property and enjoy freedom of speech; did you not?

A. I was not concerned with these things. All this was discussed in the Ministries of Interior and the Four-Year Plan.

Q. Well, my question was, did you change your mind or not?

A. No, I did not change my mind. I considered it better to keep on doing it the way I just mentioned to you.

Q. Do you consider the Jewish people an inferior race?

A. I look at them as a foreign body in the German State, which should not be allowed to assimilate with the Germans.

Q. Well, the Party attitude against the Jews, originally arose out of the fact that they were powerful politically, and the Party wanted to get into power; and they had to dispose of the Jews in politics to do so; did they not?

A. In comparison to the number of Jews in Germany, they had a much too strong influence in politics.

Events Leading to Hitler's Acquisition of Power

Q. I wish you would tell in your own words, generally, just what happened in the latter days of 1932, and the early days of 1933, when Hitler became Chancellor?

A. That was a natural development in a democratic way. In July, '32, there were elections to the Reichstag, and we had 230 representatives, and as such, were the strongest party in the Reichstag. We had far more than the Social Democrats who, up to then, were the nominating party. Then there was a new election to the Reichstag, in November 1932. At that election the Party suffered a setback, and had about 30 members less. Then we had about 196 representatives; but we were still, by far, the strongest party in the Reichstag. Therefore, no other party had the right, according to the Weimar Republic, to take over the leadership of the state. It was impossible to form a government without the National Socialists, since we were the strongest party. That was already impossible since July '32; and then they put in Papen as Reich Chancellor, as an emergency measure, and then later, General Schleicher was put in.

Q. Put in by whom?

A. The President called him in.

Q. You mean von Hindenburg?

A. Yes. That was not the way any more, as it was said, in the Weimar Republic, because the laws laid down there said the strongest party was to represent the Reich.

Q. And by that you mean, that the Chancellor should be selected from the strongest party, by the President of the Reich.

A. Or the government was to be represented by a member of the strongest party; and if there was not one strong party, then several parties were put together, and one member out of these was to represent the government.

Q. And how did it come about that Hitler was appointed Chancellor under those circumstances?

A. We were by far the strongest party in the Reich, but we did not have the majority in the Reichstag. Nobody wanted to let the National Socialist Party come to power. Therefore, the government was formed under Papen and Schleicher.

Q. Do you mean by that, that the National Socialists and the Social Democrats compromised upon von Papen?

A. No, the President did that himself, because he had his ministers, and therefore he had the right to do so; but the government always had to have the confidence of the Reichstag. However, when Papen was presented to the Reichstag a lack of confidence in Papen was perceived.

Q. In other words, the Party was not satisfied with Papen?

A. No, because we considered it unjust to be excluded from the Government, since we were the strongest party.

Q. To what party did Papen belong?

A. Papen belonged to the Centrum Party. He was not in that party any more; he had his own politics, and he had a special position.

Q. Did Papen have members in his cabinet who were members of the National Socialist Party?

A. No, he never had any members of the Party, or the Centrum Party, in his cabinet, only officials.

Q. And whom did Hindenburg appoint to succeed Papen?

A. Papen had to retire after the mistrust became known, so that the Reichstag was dissolved. Papen had to retire, also, because the new Reichstag, which was elected in 1932, did not give him the majority either. Therefore, the President named General Schleicher as the Reich Chancellor.

Q. And to what Party did he belong?

A. Schleicher was a general, and not a member of any party.

Q. The National Socialists were not satisfied with him either, were they?

A. Schleicher, also, like Papen, was not in the government, representing a party; he was a member by himself. Therefore, he would not have gotten the majority in the Reichstag, just as Papen did not get it.

Q. You mean by that, that he could not receive a vote of confidence in the Reichstag?

A. No, he could not get a vote of confidence in the Reichstag. But it did not go that far any more. The President then saw that it was not possible to work without the approval of the Reichstag.

Schleicher then wanted to rule as dictator, without the Reichstag, and the President refused this, because it seemed too dangerous to him. He was afraid it would lead to a civil war; and to prevent this danger, he, therefore, called the Fuehrer into the Government in '33, and released Schleicher.

Q. And Hitler was appointed Chancellor on the 30th of January 1933, was he not?

A. On the 30th of January 1933, in order to have a quiet development in politics.

Q. How long after his appointment was it before the Reichstag was dissolved?

A. There were again elections for the Reichstag on the 7th of March in '33.

Q. Who was it that suggested that the Weimar Constitution be suspended in February 1933?

A. This was done after the fire in the Reichstag, in the Ministry of Interior.

Q. Well, who was it who suggested that it be done?

A. I, because I was Minister of Interior.

Q. And why did you think it was necessary to suspend the constitution?

A. Because we had to consider this attack on the Reichstag as a revolutionary one, and a revolutionary beginning, and if we would not do something to give more power to the government, we would have to expect more attacks.

Q. This was a very extreme measure, was it not?

A. But this was not the first of that kind. There were other such measures taken by other men. I remember Bruening, making a decree, taking away the basic rights of the people.

Q. My question was, this was an extreme measure, was it not?

A. Naturally; it was a special decree. That is what we called the special occasion, which was already accepted in 1920, at the time of the revolution.

Q. And on how many other occasions was the Weimar Constitution suspended?

A. In my opinion, it must have been a half a dozen times.

Q. Were they all considered to be emergency situations?

A. These were emergency measures, as the name itself said.

Q. Under what legal authority was the constitution suspended?

A. There was a special law, in the Constitution of the Weimar Republic, Article 48, which gives these powers to the Reich President. To answer your question more exactly, this was suggested to the President, by the complete cabinet, and the President decided upon that.

Q. Article 48 of the Weimar Constitution only provided for temporary suspension of the constitution, did it not?

A. That's right. I was also of that opinion. I was of the opinion that this should be done for a limited time.

Q. Well, Article 48 of the Constitution says that it should be suspended only temporarily, does it not?

A. I don't remember exactly the wording of it, but I remember that it says that it is not to be a rule, but is only to be for a limited time, but we could not change this law any more, because there were consecutive Communistic activities against our government.

Q. You say you were one of the men who suggested the Constitution be suspended, and that your reason was the Reichstag fire, is that right?

A. Yes, as a member of the Ministry, as Minister of the Interior, I was of the same opinion, that there had to be some kind of protection now.

Q. You were appointed Minister of Interior the same day that Hitler became Chancellor.

A. Together with Hitler, on the 30th of January 1933.

Q. Were you present in Berlin when the Reichstag fire took place?

A. Yes.

The Reichstag Fire

Q. Tell us what happened, from your point of view, and from your understanding of the Reichstag fire.

A. During that evening, I was at the Kaiser Wilhelm Society. All the members are scientists there. About ten o'clock in the evening, there was a phone call, and we received the news that the Reichstag was on fire.

Q. What did you do?

A. I was told that Goering, who was the Minister of the Interior for Prussia, was there, and already active, so I stayed with the society. I did not go to the Reichstag later on, but I heard that the Fuehrer and other members of the Reichstag went up there.

Q. Did you talk to the Fuehrer about it later?

A. We talked about it. I can't tell you exactly the details about it, but I think we talked about what measures we would have to undertake now.

Q. Well, who started the fire, did you conclude?

A. There was an open trial, in which many Communists were convicted of having started the fire.

Law-Making in a One-Party State

Q. Who suggested the law of 14 July 1933, making the National Socialist Party the only permissible party?*

A. The Fuehrer demanded that.

Q. Did you write that law?

A. It was worked out in the Ministry of Interior.

Q. And you signed it, did you not?

A. Naturally.

Q. That law prohibited all parties, not just the Communist Party, did it not?

A. Yes, all parties were prohibited, and the National Socialist Party was the only party acknowledged. That was the reaction to the very bad party system. We had 46 parties. You don't know such a thing in the States, and this was very bad for the German people.

Q. Well, the theory of this law, and the effect of it, was to give the National Socialist Party absolute control of the government, was it not?

A. It was the only party, and as such, represented the whole German people.

Q. This was strictly contrary to the democratic theory of government, was it not?

A. But this was wanted by the German people, because later on, even though there was only one party, the German people were asked if they wanted a National Socialist Party, or if they didn't want it; so there was an election where they had to vote "Yes" or "No," and they voted "Yes."

Q. But the effect of the law itself was to put the National Socialist Party in absolute control of the government; isn't that true?

A. Absolutely.

Q. And this was strictly contrary to the terms of the Weimar Constitution; was it not?

A. This was a change in the Weimar Constitution, but it was protected by this one point in the Weimar Constitution, which says that such changes can be undertaken.

Q. But the Constitution of the Weimar Republic states specifically that the changes are to be temporary, does it not?

A. This all does not concern Article 48, but the Reichstag, with the majority of two-thirds, gave the right to the government to make any changes in the laws of the country, and as such, this law was made.

Q. So you mean to say the Reichstag could change the constitution any time it wanted to, under the principles of the constitution?

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*See documents 1388-A-PS, vol. III, p. 962; 2403-PS, vol, V, p. 71.

A. Naturally, because that is even in the constitution of the Weimar Republic; I think it is in Article 78; that is, the constitution can be changed, but only if there is a majority of two-thirds or more; and since there actually was a majority of two-thirds in the Reichstag, this law was accepted.

Q. But that vote was taken after a law prohibited the existence of all other parties but the National Socialistic Party; was it not?

A. Up to the 14th of July, the parties were still allowed. Only by reason of the special decree, the Communists were not allowed in the Reichstag any more, because they were guilty of the fire in the Reichstag.

Q. In other words, the constitution was suspended in order to prevent the Communists from causing a revolution; is that right?

A. Yes, but not only this; it was also done to create a new law for its protection.

Q. And also to give the Party the absolute control over the government.

A. To have one party, and to have a united political policy that could not depend upon the frequent changes in the Reichstag.

Q. And by these actions, the fundamental form of the German government was changed.

A. Naturally, yes.

Q. And it was these things that made it possible for Hitler to have the extreme power that he soon had.

A. This power grew more and more. That was a development that continued. In the year 1933, it still was the government. At that time the government made the law forbidding all other parties.

Q. I want to ask you this: Between the years 1923 and 1933, how were the laws of Germany passed, the mechanical procedure of passing laws?

A. If the Government wanted to pass a law, the party that was demanding this law gave a draft of it to the government. If the Reich Cabinet and the Reich President agreed on the draft, it was passed on to the Reichstag.

Q. And did it have to pass by majority vote of the Reichstag, in order to become a law?

A. It had to be accepted by the majority.

Q. Well, as a member of the Reichstag, not as Minister of Interior, could you propose a law on the floor of the Reichstag?

A. A law could be suggested during the course of the Reichstag, if you had 30 signatures.

Q. And if such a suggested law was approved by a majority of the Reichstag, did it become a law even though the cabinet did not want it as a law?

A. The cabinet had to accept it, and the President, naturally, too.

Q. In other words, it took the President, the Cabinet and the Reichstag to approve a law before it became a law?

A. That is the way it is.

Q. Now, after 1933, that continued to be the case, did it?

A. It was still the case, but it was all one unit.

Q. Well, how did a proposal become a law after 1933?

A. This law was made by the cabinet, which at that time had the power to make the laws.

Q. What do you mean by a "law made by the cabinet which has the power to make the laws?"

A. For instance, this law forbidding all parties was made by the cabinet itself and did not go through the Reichstag.

Q. Well then, prior to 1933, in order for a proposition to become a law, it had to be approved by the President, the Cabinet, and the Reichstag; but after 1933, is it a fact that the Cabinet could just make a law without the Reichstag or the President?

A. That is the way it was. There were two ways, the old way, through the Reichstag, the Cabinet, and the President; and then there was the other way, by which the cabinet could make laws, because of the power that was given to them by the Reichstag.

Q. In other words, prior to 1933, it took three groups to make a law; is that right?

A. Yes, the three had to agree upon it.

Q. But after 1933, the Reichstag said that if the Cabinet wanted to make a law, it didn't have to come back to the Reichstag and have their approval.

A. That was a power given to them.

Q. And by whom was that power given?

A. The Reichstag, by reason of their majority of two-thirds, gave this power to the cabinet.

Q. And did they also give the power to the Fuehrer to make a law without the consent of either the Cabinet or the Reichstag?

A. That was a development which happened later.

Q. Well, tell us about that?

A. This authoritative regime became stricter and stricter, and even later on the cabinet did not meet any more. The last meeting of the cabinet was in 1937; and it so happened that a decree of the Fuehrer was equal to a law.

Q. Was there ever any constitutional provision, or a law of the Reichstag, that said the Fuehrer could pass laws by himself?

A. There was no such law. That was a development of the government, which went very slowly and was unnoticed by anybody. I think in 1942, the Reichstag gave complete power to Hitler.

Q. But Hitler issued decrees and laws prior to 1942; did he not?

A. That was a development about which I talked before, that the power of the Cabinet was assumed by the Fuehrer.

Q. In other words, on the theory of the Fuehrer Pprinzip, the Fuehrer just made laws whenever he wanted to; is that correct?

A. Yes, that is the way it was. The Fuehrer decreed it.

Q. And then after the elections in the fall of 1933, there was really no point to having a Reichstag at all; was there?

A. The Fuehrer used the Reichstag as a loudspeaker to the public.

Q. Well, did the Reichstag ever refuse to pass a law that the Fuehrer sent to the Reichstag and told them to pass?

A. No.

Q. Did the Cabinet ever refuse to pass a law or make a law that the Fuehrer directed it to make?

A. That was impossible since there was only one party, and the Fuehrer was at the same time head of the Party.

Q. Well, theoretically, the Reichstag could disagree with the Fuehrer if it wanted to, could it not?

A. Naturally, but it never happened.

Q. Why didn't it happen?

A. Because all the members of the Reichstag were members of the Party, and the discipline of the Party was very strict; but there were also cases where the Reichstag acted in passing laws. For instance, in January 1934, the law about the rebuilding of the Reich was accepted in the Reichstag.

Q. Why was it that sometimes a law was just a decree of the Fuehrer, while at other times, it was a decree of the Cabinet; and at other times it was passed by the Reichstag?

A. Originally, they could accept laws, but by reason of giving the power to the cabinet, the laws were made by the cabinet itself. Later on, when the Cabinet did not meet any more, this power slowly was assumed by the Fuehrer.

Q. Well, there were other agencies which had a right to pass laws, too, were there not?

A. No, there was nobody else.

Q. How about the Ministerial Council for Defense of the Reich; could it not make laws?

A. This Council fell asleep very shortly, and they never met.

Q. Well, it had the right to make laws; did it not?

A. They were to represent the government. It was a committee from the Cabinet.

Q. Well, it issued decrees and laws, didn't it?

A. Yes, that power existed.

Q. Did the Reichstag after 1933 ever pass any laws without its being ordered to do so by either the Cabinet or the Fuehrer?

A. Yes, it sometimes happened that initial suggestions were made by the Reichstag, and they were signed, and they were executed; but these suggestions were only made with the acceptance of the Fuehrer, in his capacity as Chief of the Party.

Q. In other words, after 1933, the Fuehrer could make a law without asking anybody; is that right?

A. From 1933 on, only the Cabinet.

Q. My question is this: If the Fuehrer wanted a law passed, he could issue a decree, if he wanted to, without asking the Cabinet or the Reichstag, could he not?

A. It never happened that the Fuehrer passed a law that was not accepted by the Cabinet, but as I said before, later on, Hitler and the Cabinet were not active together.

Q. But didn't Hitler and the Cabinet ever disagree over any laws at all?

A. No, that did not happen.

Q. Then what was the purpose of having a Cabinet?

A. Therefore, it was not active any more. That was the unfortunate development that led to it, that there was nothing left but the Fuehrer. We didn't have anything to say any more.

Q. You, with a long legal background, and one of the leading attorneys of the Reich, did you subscribe to that sort of procedure?

A. We were not asked. All this happened over our heads. What could I do? I could only give my disapproval; and I, myself, told the Fuehrer so many times.

Q. You were a party to creating the situation in July 1933, when you eliminated all opposition to the National Socialist Party; were you not?

A. The situation at that time was that everything still went through the Cabinet.

Q. You favored doing away with all parties except the National Socialist Party; did you not?

A. There was a big problem that there were too many parties, and there just couldn't be anything but one party; and there always was the problem of seven or eight million unemployed.

Q. Well, wouldn't it have been possible to issue a decree or pass a law, permitting two or three parties, rather than to say there could only be one party, and therefore save one semblance of democracy? Wouldn't it have been possible to issue a decree or pass a law in July of 1933, allowing the existence of two or three parties instead of just one party, so that there might be a democratic process in the future?

A. That would have been very nice, but we didn't know which one to take of the 46.

Q. Well, just because there were 46, didn't mean you had to eliminate all but one, did it?

A. Which should we favor? The two-party system, as you have in the States, is ideal, and that would have been also ideal for us.

Q. Well, let me ask you this: Isn't this what actually happened, that the National Socialist Party, in its desire to gain the absolute rigid control of the government, under the guise of getting rid of Communists, really took over the government completely?

A. Yes, they were limited by the law of June '34.

Q. And you favored that procedure, did you not?

A. Yes, if you could have foreseen the development to such an extent, the way it is now, it is very unfortunate to give the power to one man. We have got to look at all these things, not from what we know now and today, and from things that happened in the meantime, but from the way things were in those days.

Q. But the truth is that the public was deceived by the procedure that you followed.

A. I don't think they were deceived, because there actually was an acute danger which would have led to a civil war.

Q. Well, when you suspended the constitution, you told the public you did it to prevent Communistic acts of violence, but you went further and prevented an action by anybody, let alone Communists.

A. This was not also done to eliminate all other parties, but to eliminate the great misery that existed at that time. There was a catastrophe in the agricultural field, and there were many unemployed, and something had to be done.

Q. How long after the temporary suspension of the constitution was it before you suggested that it be reinstated?

A. We have to make a difference between the decree of 28th of February, against the Communists, and the decree of 14 July, which led to the complete prohibition of all parties.

Q. Well, did you ever advocate going back to the Weimar Constitutional form of government?

A. No, it was impossible though it would have been the ideal thing then.

Q. What do you mean it was impossible?

A. Because that decree, passed on the 28th of February, which was supposed to be an emergency measure for a limited time, had to be continued since there was always the danger of the Communists. Then the war started and nothing could be changed any more.

Q. You mean in 1936, you were still afraid of the Communists?

A. There were still individual activities. There were cases where Hitler youths were killed.

Q. Why, in 1936, all Communists were in concentration camps, were they not?

A. That is not right. There were still enough Communists at large. Only Communists who were active were brought to concentration camps, but not the ones that had Communistic ideas.

Q. Well, you weren't afraid of the inactive Communists, were you?

A. But they could become active.

IX. JULIUS STREICHER

Excerpts from Testimony of Julius Streicher, taken at Nurnberg, Germany, 1 September 1945, at 1415, by Col. Howard A. Brundage, JAGD. Also present: S/Sgt. Howard M. Levy, Court Reporter; Rudolph Pressburger, Interpreter.

Origin and Development of Streicher's Anti-Semitism

Q. What about the teaching of the preservation of blood lines of the master race?

A. Yes, I wish I could express myself openly.

Q. Well, go ahead.

A. Before the first World War, I belonged to the Young Democratic Party. The leader of the Young Social Democratic Party was a Mr. Kramer, who worked at Kohn's bank in Nurnberg. I have talked very often at the evening meetings of the Young Democratic Party. I didn't know any racial questions at that time. During those discussions, I received opposition from young lawyers who were talking against me. This holds true especially when I talked about nationalistic matters. On my way to Rome, I was warned by this Mr. Kramer that I should express myself in those meetings more carefully, since all those young lawyers were Jewish, and I asked him what the word "Jewish" means.

This Mr. Kramer told me: "Streicher, be careful, the Jews are very mighty." This was the first time that I was conscious of the fact that the Jews are no religion but a race. Between Catholics and Protestants you cannot differentiate, but you can differentiate between Protestants and Catholics, and Jews, according to race. After the first World War I came as an officer from the front, and desired to work again at my old trade. I was a school teacher. Then I saw for the first time the red posters saying that the public should attend the revolutionary meetings. Time and time again I went to those revolutionary meetings, and I was astounded to see that all the speakers were members of the Jewish race. The speakers were inciting the working class and telling them of the good things of former times. I volunteered, one time, for a discussion and took opposition to one of those Jewish speakers. I told the workers that it was unnatural to be led by members of the Jewish race. I told them that it would be unnatural if a member of the Jewish race would go to Palestine and dare speak in a Jewish meeting against their own nation.

Q. Go ahead with your story.

A. This takes place in the spring of 1919. After this speech and this discussion, the whole room applauded me. I went to the next revolutionary assembly of the Communist Party. Everything was prepared so I didn't have to talk any more. I again reported for the discussion. At this time I was thrown off the speaker's platform. They spit at me and threw me out of the assembly hall. At that time I decided to hold my own meetings and enlighten the public. At that time, no one had heard anything about Adolf Hitler. Destiny brought me into this, not the hate for the Jewish race. Destiny told me to fight for my people, my race. My first assembly meeting in the Hercules Velodrome was crowded. Ten thousand people were standing in front of the assembly hall, and it had to be kept in order by the police. I spoke at this assembly for three hours. I told how the German people were enslaved by the Treaty of Versailles, and I said that it is impossible that in all states in Germany, Jews were made ministers. I also declared in this assembly that it is up to the German people to govern themselves. I declared that the Jews as a nation by itself would refuse to be governed by ministers of English, French, or German nationality.

Q. You said "English, French or German"?

A. Nationality. I also declared that if Germany wanted to be free again the Treaty of Versailles has got to be broken, and also the reign of the Jews in Germany. Until the year 1921, I had a big mass meeting in Nurnberg every week. Besides that, I participated several evenings during the week in discussions, in smaller groups. That is how the mass movement of German workers got together in Nurnberg. In the year 1921, a wholesale man from Nurnberg asked me if I had heard speeches by Adolf Hitler. I got interested and went to Munich, to an assembly in the Buergerbrau of Adolf Hitler. At that time I did not know Adolf Hitler. At that time I heard him for the first time at Munich. He spoke for almost three hours. The enthusiasm was enormous. I myself was very enthusiastic. After Adolf Hitler was finished with his speech, I arose and forced myself through the crowd to the speakers' desk. I went towards him and introduced myself. I spoke to him: "Heil Hitler! I heard your speech. I can only be the helper but you are the born leader. Here is my movement in Nurnberg." On that evening I gave the movement which I created in Nurnberg to Adolf Hitler. With that I was a member of the movement of Adolf Hitler. It carried the name of "National Socialist German Workers' Party." I carried on my business in the movement in Nurnberg. The name of "Gauleiter" did not exist at that time. The movement of Hitler called itself "Partei" at that time, but it was not an organized movement. At that time, everything was a movement at the beginning. With the handing over of my movement to Adolf Hitler, the bridge was built between southern Germany and northern Germany. For myself, I left Nurnberg and in the next few years made a lot of speeches, in all the larger cities of Germany.

The terror against the National Socialist movement was organized in all Germany. Many assemblies were interrupted by the Marxists, but we succeeded in getting the working people on our side. I again and again told the workers at the meetings that Marxism is the creation of world Jewry. I again told the workers that the creation of Marxism was to keep the power of the workers down. I also told the workers that Marxism would not bring about world revolution but would help world capitalism. I also told the workers that the destination of the Jewish world regime meant the enslaving of the workers.

Q. Now, following that, you then joined with the Party and continued to preach those things; is that right?

A. Yes, since 1921, as I remember.

Q. Well, as a leader of the Party and the leading exponent of anti-Semitism, didn't you know that over two million Jews were killed in concentration camps?

A. No.

Q. Well, when these Jews were put into concentration camps, and never appeared again, what did you think happened to them?

A. After the taking over of the power, all Jewish leaders in political life were put into concentration camps, but a lot of Jews emigrated to other countries. Whatever happened thereafter, I don't know.

Q. Well, when a Jew was put into a concentration camp, and you never heard from him again, don't you believe it was your duty to make inquiries?

A. No.

Q. As you sit here now, and see the result of the Party's program, with respect to the race question, do you still believe that these theories were right?

A. The program as it was laid down in the Fuehrer's book "Mein Kampf," in the year 1920, all the world knows is right, but as a human being, the execution of the program, as it is known today, is not right.

Q. Well, isn't it a normal result from the preaching of race hatred?

A. Anti-Semitism is all over the world. There are about 12 anti-Semitic newspapers in the United States. Mr. Ford published an article in one of his papers. Radio Priest Coughlin can speak openly in the States. Mosley in England pronounced anti-Semitism in the open, and if the declaration about race hatred which I preached would lead to mass murder, we would have had a mass murder right in this town of Nurnberg. This is the most anti-Semitic city in Germany. There are millions of people in Germany who heard my speeches in which I declared: "The question of the Jewish race has got to be taken care of the legal, international way." I openly and repeatedly declared that "Who hits the Jews or one Jew, helps them," and I openly declared that it does not solve the problem of the Jewish question.

Q. Well, the fact is that there was mass murder of the Jews in Germany. Now, was that a result of this Party program or not?

A. It was never a part of the Party program. Whatever happened here was the result of a superhuman being, and it was not a Party program.

Q. Do you mean the "Super Race" theory?

A. Madison Grant, an American writer, published a book in

1913, in which he writes: "The most active race is the Nordic race," and he declares that through the mixing of races, the Nordic race will go down into a race of swamps.

Q. How many Jews did you put into the concentration camp?

A. I hereby declare—you might believe it or not—I do not know how many Jews were put into concentration camps in my Gau, as this was done through the Political Police of Mr. Himmler.

Q. I am asking how many Jews you put into the concentration camp?

A. I have not brought any into the concentration camp, and how many were brought in, I don't know.

Q. How many Jews did you turn over to the Gestapo to be put into the concentration camp?

A. I myself did not give any Jews into concentration camps, though the police had the list of those Jews and they took care of that.

Q. Who gave the police the list?

A. The police got those lists themselves, and the housing office got all those lists and gave the police the responsibility, most likely, to put up their own lists.

Excerpts from Testimony of Julius Streicher, taken at Nurnberg, Germany, 7 October 1945, 1545-1555, by Col. Howard A. Brundage, JAGD. Also present: Lord Wright, head of the United Nations War Crimes Commission; Pfc. Richard W. Sonnenfeldt, Interpreter; WOJG Jack Rund, Court Reporter.

Streicher Summarizes His Jewish Policy: Zionism

Q. What action did you take with respect to the formulation and the enactment of the Nurnberg laws?

A. Unfortunately I had nothing to do with the Nurnberg laws. Unfortunately I had nothing to do with them, but the Fuehrer once mentioned the matter to me and he said that there was a Jewish law by Ezra, in the Old Testament. He said that an old Jewish law existed, which had been brought out by Moses, which said that Jews were not to marry any non-Jewish women. Then at a later time, Jews had married quite a few non-Jewish women, and Ezra acted against this.

Q. How many times did you talk with Hitler about your beliefs regarding the anti-Semitic program?

A. Well, Hitler published his book, "Mein Kampf," and thus he manifested his opinions about this subject for the public.

Q. Didn't that pretty accurately reflect your opinions?

A. Yes, of course.

Q. Where did he get his opinions from?

A. The Fuehrer tells in his book "Mein Kampf" that he mentioned a man by the name of—I believe his name was Luegel, and also another man by the name of Soureil. He says his anti-Semitic views stem from that time.

Q. In your opinion, were not the Nurnberg laws a crystallization of the beliefs that you had been teaching in Germany?

A. The Fuehrer did not tolerate any influences in matters of an ideological nature. You could not counsel him in such things.

Q. No, but you had been teaching, and writing articles on the question of blood and race.

A. I wrote those things already before I made the acquaintance of the Fuehrer.

Q. Yes, and before the enactment of the Nurnberg laws.

A. Yes. A long time before that.

Q. How many years?

A. I made my first speech in November of 1918, when I returned from the front.

Q. The first time you met Hitler you claimed that you had a following larger than his, is that correct?

A. I was talking of the number in Nurnberg, and that was a labor movement.

BY LORD WRIGHT:

Q. What did you advocate, in those days, as the proper treatment of the Jews?

A. I always stood for the Zionist opinion. I will only mention here Theodore Herzl, who was one of the most famous leaders of the Jews, and he wrote in his diary that you will find anti-Semitism everywhere. That is, you will find it in all those countries where Jews were present; and wherever Jews were settling to, anti-Semitism would rise there.

Q. But what were you going to do?

A. Like him, I advocated a National State for the Jews. It is interesting here that Herzl does not object to the racial question. He recognized the Jews as a separate state. The English Government was petitioned in the last war, and again in this war, and Mr. Churchill knows all that, that a certain part of Palestine was to be set apart, as an area for the Jews. Who was that English statesman in the last war—it was not Lloyd-George—oh, yes, I remember, it was Balfour. He made a declaration wherein he promised at the end of the war negotiations should be started, and the aim of these negotiations should be that the Jews were to receive an autonomous state in Palestine. Thus it was to be assured that they would have a political home in the world.

Q. Do you know how large Palestine is?

A. Palestine itself is not very large. I believe that I read some Jewish books which claimed there were 16 million Jews in the world, and thus the land in Palestine would not be enough for them. However, their demands were to found a state of their own.

Q. You knew, then, that you couldn't get them all into Palestine?

A. Yes? Whether I knew that?

Q. Yes.

A. Well, I thought about it a great deal, and I thought that if they were to be given just Palestine itself, it would not be enough. Then people say that the Arabs were not at all in favor of this idea. I was thinking of Transjordan, and also Syria, that might be given to them.

Excerpts from Testimony of Julius Streicher, taken at Nurnberg, Germany, 17 October 1945, 1050-1250, by Col. Howard A. Brundage, JAGD. Also present: Siegfried Ramler, Interpreter; S/Sgt. William A. Weigel, Court Reporter.

What Streicher Meant by "Extermination"

Q. So, summarizing your testimony, there was a change in the basic teaching, merely because you read a book written by a man named Kaufmann?

A. Yes. One only has to read the edition of Der Stuermer that related to that and one can see that a tendency has been adopted which was far more radical.

Q. Just briefly, what was the teaching prior to that time?

A. Always the same. I have been asked before whether it was my point of view that I thought it right that a Jewish national state should be established. I can say now that between 1941 and 1943—I don't know exactly at what period—we wrote an article in our paper, where we asked that Madagascar should be given to the Jews. The German Censorship Department in Berlin sent back the finished article—I think it was already printed—and did not accept it. This can be certified by my chief editor, Ernst Hiemer.

Q. Did you approve everything that Hiemer wrote?

A. I have had different journalists. Naturally, I did not approve everything, not every single sentence; that is clear.

Q. Did you approve the articles as published in your paper?

A. Yes, certainly, mainly, yes. I want to amplify something in the question of Madagascar. There was an International Anti-Semite League. On every Reichsparteitag in Nurnberg, anti-Semites gathered in Nurnberg from America, from England, from South America, from everywhere. It happened every year. There, repeatedly the question came up regarding a Jewish National State. I want you to ask Mr. Rosenberg. Rosenberg, who was in charge of the ideological education, can certify that he has spoken about this question of Madagascar.

Q. What about Palestine?

A. Palestine is a request of the Zionist Jews. Theodore Herzl has been one of the most famous and greatest Jewish leaders. It was Herzl who caused the Balfour Declaration. Balfour, after the request of the Jews, has given a written declaration where he stated that Palestine should be given for the creation of the Jewish State. At the beginning of this war, discussions in this respect have taken place.

Q. If I understand you correctly, you have at all times advocated the removal of Jews from Germany?

A. Yes. Always on an international basis. I have always propagated in my paper that the Jewish question should be solved by the Jews forming a national state, just like any other nation, and should create a home there.

Q. What mechanics did you advocate that should be used for moving Jews out of Germany?

A. Whatever I have advocated publicly is here written down in my paper. I can declare under oath that there is nobody, not here in the prison or anywhere else, who can say that at any time I have been asked by the Fuehrer to discuss with him the question of the Jews. I can declare here that my paper was the only one which was not recognized by the Party. My paper did not bear the Party stamp of approval. All the other papers did. I have not been asked to take part in the discussions of the Nurnberg laws. Everybody can certify to that. Frick has been taking part in it, but I have not.

Q. Now will you direct your attention to my question. How did you preach that the Jews were to be moved out of Germany?

A. I have made no public suggestions.

Q. Did you ever use the word "exterminate"?

A. I think my chief editor used it once, and in this article he also cited Kaufmann. This must have been one of his last articles, of February or March—I don't know exactly. He pointed out Kaufmann's request. I don't know exactly, but I do not believe that

I myself have ever used the expression "extermination." Had I only used the expression "extermination" now, the extermination would have happened already anyway, as I found out here in Mondorf.* May I say something about that? It is quite a general explanation.

I want to declare under oath that there might be gentlemen present here, I don't want to defend them, of whom it is supposed that they know about this question. I declare that they did not know about it. In Mondorf a Jewish officer came to me and presented to me an illustrated paper which had been published by Eisenhower. I declare here, I was terrified myself. I did not think it was possible. I want to give another explanation. The Fuehrer is dead. I respect the majesty of the dead. I am not the defense counsel of the Fuehrer. In December 1938, when I visited the prison in Landsberg, [sic] I spoke to the Fuehrer for the last time. I declare here that up to the year 1938 I have not heard the Fuehrer express the opinion that the Jews should be exterminated, either in an unofficial talk or in a Party official talk.

Q. Did you ever use the word "liquidate"?

A. No.

Q. Did you approve the article that was written by Hiemer where he used the word "exterminate"?

A. "Exterminate" and "destroy" are two different words in the German language. At the moment I am speaking about destruction. This word "destruction" was used by the Fuehrer. A report might have come from the Fuehrer, "The English or American company has been destroyed. There were so many prisoners and so many dead." In the German language, when I say that somebody's life should be taken, I would use either "killed" or "murdered," but I think "kill" would be the right expression. Extermination can result by sterilization, as Kaufmann wrote. The word "extermination" does not necessarily mean killing.

Q. Now will you answer my question: Did you approve the article that was written by Hiemer?

A. I believe yes. I have approved it, because he was my chief editor. He stated what different Jews had said, and referring to what Kaufmann, this Jew, has said, he also used the word "extermination." He just used it in one article.

Q. Who became radical first? Hitler or you?

A. I only know about myself.

Q. When did you become radical?

A. As soon as the book was published by Kaufmann, but we did not write anything about killing or murdering.

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*See footnote, p. 1193 of this volume.

Q. Basically, what was the change that took place after you read the Kaufmann book?

A. I think I have written that if the Jews want to exterminate us they should be exterminated, too. I think these articles should be presented to me. I cannot remember them in detail.

Q. They will be presented to you in due time.

A. Yes.

Q. Is that what you mean by becoming radical, that you merely made such a statement?

A. Yes.

Q. Is that the only time you ever made such a statement?

A. I believe yes. No letter and no correspondence exists in my file where I said or I suggested to anybody that Jews ought to be killed.

Q. Do you accept any responsibility for the killing of Jews in concentration camps as a result of your teachings?

A. Only such a person can testify to a thing like that, who is paid to falsify the truth. This is impossible. Here are the documents. The killings have been ordered from Berlin. Nobody in Germany would have carried through any killings without having received orders.

Q. Do you remember on the 11th day of August 1938, that you gave the signal for the destruction of the main synagogue of Nurnberg?*

A. No. No. I have not done that.

Q. Do you remember that the issue of the Fraenkische Tageszeitung of 11 August 1938 came out with a banner headline: "Julius Streicher Gave the Signal for the Destruction of the Main Synagogue of Nurnberg."

A. I have not read this article, but I have already said that the main synagogue of Nurnberg has been removed by the Oberbuergermeister.

Q. Do you remember seeing that edition where the entire four pages were taken up with pictures of yourself officiating at the ceremony and giving the text of your address, giving the order for the destruction of the synagogue?

A. Even before the acquisition of power of Hitler in 1933, I have already made speeches and said that, in Nurnberg, "An oriental building in the middle of the town is a shame and it is high time that it disappeared."

Q. Then you were there, and you did participate in that ceremony?

A. Yes. We have also removed a Protestant church in Munich, because it did not fit into the street. However, that has nothing to do with the 9th of November, with the burning of synagogues.

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*See documents 1724–PS, vol. IV, p. 224; 2711–PS, vol. V, p. 376.

Q. I didn't say it had anything to do with it. I asked you if you gave the signal for the destruction of the synagogue.

A. Yes, for this synagogue, yes.

Q. You then want the record to be changed where you said "No" the first time?

A. At that time I thought you were referring to the burning of the synagogues. I mixed it up.

Q. This article in substance says that "Many people are quite smug because the Jewish question in Germany is solved. The Jew is barred from civil life and politics. German blood is protected by the Nurnberg laws," and so forth. "Such persons," according to you, "are taking only a superficial view of the Jewish question. The German people will not be free of danger from the Jewish plague until the Jewish question is liquidated in its entirety. The danger of the plague infecting the German people will continue to exist as long as there is a seat of this pestilence anywhere in the world."

A. This has nothing to do with killing. With that is meant that as long as a Jew anywhere in the world has the possibility either to mix sexually or acquire the power in the individual country. I beg to point to some other of my similar articles where I wrote, "as long as the power of the Jews is not broken," and these articles referred back to this time.

Q. What do you mean by the word "liquidate"?

A. I have not used the word "liquidate."

Q. What is meant by that?

A. No more sexual intercourse. No more political influence. No more possibilities for them to play off peoples against one another.

Q. If you were proposing a safe haven for Jews, how do you consider that any seat of pestilence, as you say, can be cleared up?

A. All this belongs to the solution of the whole Jewish question.

Q. If you say there is a danger of the German people becoming infected so long as there is any place where Jews are in control, how did you propose to solve that question?

A. The Jews are the only people that are distributed among all countries, and in spite of that, they have remained a people, a race, a unified religion, and a nation. There is only one solution, and this solution can only be arrived at in an international way by a conference of the big powers. In this state, they would be under their king or president, citizens of the state, and just like any Chinese or Japanese, they could come into another country as members of their own country. This state would have the same international rights as every other state, with their ambassadors and delegations but the Jew would not have the right to make politics in another country as a member of a Jewish state.

Q. Then you say that in connection with that particular article, that you didn't mean that the solution of the Jewish question would be the liquidation of the Jews?

A. No.

Q. Do you admit that the reading of that article permits that interpretation?

A. Whoever knows all my writings and articles during my 25 years of journalism cannot have such an impression.

Q. Why did you permit Hiemer to use the word "exterminate"? In view of this article of yours, that permits of some wrong interpretation.

A. This is a way of expression which does not mean killing, but merely means exterminate them; get them out. At that time the article was read to me, but of course, I do not remember every detailed word.

Q. I will now show you the issue of Der Stuermer of the 19th of March 1942, and call your special attention to the editorial appearing on the first page, which runs over to the second page over your signature, and ask you to pay particular attention to that part which is marked with a red pencil, and I will ask you to explain what you meant by those passages. This article has to do with the prophecy of the Fuehrer. It goes on to say that the "Jewish penetration of Europe, especially of Germany, began under the protection of the Roman Empire, and that the solution of the Jewish problem became a question of life for Europe."*

A. Yes, this is my conviction.

Q. "There were two ways which might have led to the redemption of Europe from the Jews, expulsion or extermination."

A. Yes. I have written that purposely, but it is not stated here that killing should be that way.

Q. What do you mean by "extermination"?

A. This is the most radical and an impossible solution. Had I wanted the solution of extermination, I wouldn't have mentioned both of these ways.

Q. But you go on to say, "Just as the expulsion of Jews had led to temporary and partial results by virtue of the disunity in action of the European peoples, so also the attempt at extermination could not attain the desired purpose, as extermination was only carried out on a petty scale and within a few nations."

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*See document M–31, vol. VIII, p. 19.

A. Yes, this is a historical fact. This is the reason why I say that extermination is not the way to the solution of the Jewish problem.

Q. But later on in the article, you say, "Fate has decreed that the 20th century would see the total solution of the Jewish question. In a proclamation of 24 February 1942, to the peoples of Europe, the Fuehrer of the German Reich has indicated how this solution will be achieved."

A. At that time I did not know that the Fuehrer had Jews killed in camps. The Fuehrer has repeatedly said—unfortunately, I was not able to quote it word for word—he said that finally the Jews will approach an extermination in England and America, internationally in every country, and I think that then he referred to the political power of the Jews.

Q. Don't you point out in this article that expulsion in itself is ineffective?

A. Expulsion alone would not be sufficient. There has to be some order. They must have to have some place to go to.

Q. How do you explain the part in this article that reads, "My prophecy will find its fulfillment that the Aryan race is not annihilated by this war. On the contrary, the Jew will be exterminated. Whatever else this struggle leads to or however long it may endure, this will be the final result, and then for the first time after the elimination of these parasites, a true peace will arise in a suffering world, and thereby mutual understanding between peoples will remain for a long time."

A. The elimination of the parasites means taking them out of the people.

Q. I know it means that, but what do you mean by the statement that "the Aryan race is not annihilated by this war. On the contrary, the Jew will be exterminated"?

A. I meant that the power of the Jews was being broken.

Q. Show me any place in that article where it says that.

A. The word is not said right here, but I have written it in other articles. If extermination was to be understood by that, I would have written the word "extermination."

Q. When you wrote that "The Aryan race is not annihilated by this war," what did you mean by that?

A. What I meant was that if it is managed to take the Jews out of the different countries and place them into a state of their own, then the Aryan peoples can continue to live. If, however, the condition carries on as it was up to then, that the Jews were allowed to mix freely sexually with other nations, then the whole world will go down to destruction.

Q. Why didn't you say that?

A. There were a number of editions of "Der Stuermer" where I wrote that the peoples are going towards their destruction by sexual intercourse.

Q. Do you want the record to be changed that you never used the word "extermination"?

A. Extermination has not the meaning, as I said before, of killing, but merely excluding. As I said before, during wartime, in the German wartime language, it was often used that such and such a company was exterminated with so many people dead and so many people wounded.

Q. I will now quote to you an article that appeared in Der Stuermer on the 7th day of May 1942,* appearing over the signature of Ernst Hiemer, and which you say was printed with your approval. This article reads as follows, as it appears in the last three or four paragraphs: "Today Europe is about to carry out the final solution of the Jewish question. Precisely on that account, it is well to learn from past errors and to recall again in this matter what history teaches; and what does history teach? It teaches, 'the Jewish question is not only a German affair. It is also not only a European problem. The Jewish question is a world question. Not only is Germany not safe in face of the Jews as long as one Jew lives in Europe, but also the Jewish question is hardly solved in Europe so long as Jews live in the rest of the world. Jewry is organized criminality. The Jewish menace will thus only be eliminated if Jewry in the whole world has ceased to exist.' " Give me your explanation of that.

A. I explain this, as I explained it before, that this question has to be internationally solved; that is, the Jews have to be taken out of all countries and an international solution created. It is proof that we always wanted the international solution of the Jewish problem by always being against any individual proceedings in Germany.

Q. How do you explain the following: "but also the Jewish question is hardly solved in Europe as long as Jews live in the rest of the world"?

A. Did I write this article?

Q. Hiemer wrote it.

A. This has been written rather illogically: This can happen very often; if you just take one sentence out of an article, it might happen. You have to read the article as a whole. May I hear it again? I want to be sure.

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*Document referred to did not form part of the prosecution case as finally prepared and hence is not published in this series.

Q. "Not only is Germany not safe in face of the Jews as long as one Jew lives in Europe, but also the Jewish question is hardly solved in Europe so long as Jews live in the rest of the world."

A. This has not been expressed very cleverly, but what he wanted to say—

Q. Never mind what he wanted to say. We are only interested in what was said.

Now, when you consider that and also consider the following: "Jewry is organized criminality," what do you say to that?

A. We can prove that. With organized criminality we mean that the Jews were organized among all peoples in order to get all the wealth into their hands. The Old Testament is still looked upon as the whole history of Jews. In the Old Testament it is written, "The gates of the world are open for you and you should devour the people." The Jews are living in all the countries as Jews. For instance, the Jews in England are living there as English citizens, but they remain Jews. It says at the association between God and Abraham, it is said that God has made an association with Abraham, and the sign of this association is the circumcision, and this is how every Jew is part of this big organization by this mark of circumcision.

Q. If you believe that it is organized criminality, how could you honestly advocate the erection of a national state?

A. Why not?

Q. How could such a state exist without having some relations with other nations?

A. I have said that it should have relations with other nations, with ambassadors.

Q. Had you considered whether or not other nations would have any relations with an organized criminal nation?

A. If you take apart every one of my sentences that I have written during my past 25 years, of course.

Q. Of course what?

A. Of course, if you take out every single word, take it out of the substance, of course you can weigh it one way or the other, but what I meant by "world criminality of Jews" I made reference to the political side of it.

Q. I am not trying to trap you with any of my questions. I am merely trying to get the basic philosophy that you have been teaching. Now you say that you at all times advocated a peaceful solution of this question?

A. Yes.

Q. And that your peaceful solution was to move the Jews out of Germany and out of Europe, and to create a national state?

A. The Zionist leader, Theodore Herzl, requested that.

Q. Now you have advocated that you are able to prove that Jewry is organized criminality?

A. Yes, that I can prove.

Q. I want to put those two things together and want you to tell me what your solution is for the existence of such a national state.

A. Let us remain with the word "criminals." In France, criminals are being sent to Devil's Island. If I know that people are distributed in every country with the aim of the acquisition of the wealth that is in every country, and have as their aim to spoil every country racially, I have the right to speak about criminality.

Q. Do you take the position that every individual Jew belongs to that class?

A. No. Politically, yes. As a member of the whole community that has as their aim to enslave other nations.

Q. Did you advocate a selection?

A. International solution of the Jewish problem by the elimination of the Jews into other countries.

Q. And by that you mean all Jews?

A. With that I mean all Jews in all the countries.

Q. Without any selection as to whether they are criminals or not?

A. Yes.

Q. Then you had in mind the creation of a national state that would be something similar to Devil's Island?

A. I have said already before that Theodore Herzl and most of the Jews wanted a creation of the Jewish state. When I said "Devil's Island," I merely meant it in an illustrative fashion. I wanted to say that in France, criminals are not being killed by merely being sent to Devil's Island.

Q. What do you mean by the word "Jewry"?

A. Jewry is the conception for the whole of the Jews. You say, for instance, the world Jewry. The political aims of the Jews in the world is world Jewry.

Q. Well, would you consider that Jewry would be eliminated if this national state was created?

A. Yes. This program has started already. Cities have been built in Palestine. Agricultural schools have been set up in Switzerland, and many people have emigrated to Palestine and worked on the land.

Q. In this article you state, "The Jewish menace will thus only be eliminated if Jewry in the whole world has ceased to exist."

A. That means as soon as they have stopped to exercise any influence among the peoples.

Q. But you call it a Jewish menace.

A. I meant it a menace when people in different countries cannot assimilate themselves to the countries, but remain a united block, economically and politically.

Q. In the last few questions, I made a mistake by referring to you as the author of this article, but the article we have been discussing is the one by Ernst Hiemer.

A. I am ready to answer the question just the same.

Q. Well, I just didn't want to mislead you with those questions. However, do you accept this article as if it was your own?

A. Being as a whole, yes.

Excerpt from Testimony of Julius Streicher, taken at Nurnberg, Germany, 6 November 1945, by. Lt. Col. S. W. Brookhart, JAGD. Also present: Gladys Picklesimer, Court Reporter; Martha von Gronefeld, Interpreter.

Streicher Disowns the Fruits of His Policy

Q. Let's talk about the extermination policy.

A. Well, all I can say on this question is that I was as surprised as most of the people. The first time I learned of it was by a Swiss paper.

Q. How did it suit you?

A. What could I say? I would not be able to kill anybody or have somebody killed. I wouldn't be able to take the leadership in such a question on account of my whole attitude.

Q. You were one of the principal leaders in fomenting measures against the Jews. You must have been proud when they found a man strong enough and bloody enough to go in and wipe them off the earth.

A. If I had been the leader of the State, I would surely not have thought of doing such a thing in the moment when it was certain that we could not win the war.

Q. I am speaking of measures that were taken, starting with the Russian campaign. You remember the Einsatz groups.*

A. I stayed on my farm, and there was no one who would ever have visited me. I didn't know anything about what the Party was doing or intended to do.

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*The activities of one of the Einsatz groups are described in document L–180, vol. VII, p. 978.

Q. You certainly remember the operations of the Einsatz groups on the Eastern front.

A. I repeat under oath—you can ask everybody—there is no one who can say that I have spoken with anyone about these questions during the war.

I read in the Swiss papers—it must have been the end of 1944 or the beginning of 1945, and I couldn't believe it at the time—that they talked about a camp which they found near Cracow where many people had been killed, and I couldn't believe it.

X. ERICH RAEDER*

Testimony of Erich Raeder, taken at Nurnberg, Germany, 8 November 1945, 1040–12:01 by Major John J. Monigan Jr., CAC. Also present: Nancy M. Shields, BCV, Reporter; Leo Katz, Interpreter.

Reasons for Navy's Defiance of Versailles Treaty

Q. Would a fair statement be that the Navy High Command was interested in avoiding the limiting provisions of the Treaty of Versailles regarding personnel and the limits of armaments, but would attempt to fulfill the letter of the Treaty, although actually avoiding it?

A. That was our endeavor.

Q. Why was such a policy adopted?

A. We were much menaced in the first years after the first war, by the danger that the Poles would attack East Prussia, and so we tried to strengthen a little our very, very weak forces in this way, and so all our efforts were directed to the aim to have a little more strength against the Poles, if they would attack us. It was nonsense to think of attacking Poland in this state, and for the navy, a second aim was to have some defense against the entering of French forces into the Ostsee, because we knew that the French had the intention to sustain the Poles. Their ships came into the Ostsee (Baltic) and so the navy was defense against an attack of Poland and against the entrance of French ships into the Ostsee. Quite defensive aims.

Q. When did the fear of an attack from Poland first show itself in official circles in Germany, would you say?

A. In all the first years. They took Wilna. At the same moment we thought that they would come to East Prussia. I don't know exactly the year, because those judgments were the judgments of the German Government Ministers, the Army and Navy ministers, Groener and Noske.

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*See Statements VII, VIII, and IX, Vol. VIII, pp. 684-735; also document D-880, Supp. A, p. 1015.

Q. Then those views, in your opinion, were generally held and existed perhaps as early as 1919 or 1920, after the end of the first world war?

A. Oh, but the whole situation was very, very uncertain, and about those years, in the beginning, I cannot give a very exact thing, because I was then on duty with the Navy archives for two years to write a book about the war and how the cruisers fought in the first war. Two years—so I was not with these things.

Excerpts from Testimony of Erich Raeder, taken at Nurnberg, Germany, 9 November 1945, 1430-1620, by Major John J. Monigan, Jr., CAC. Also present: Alfred H. Booth, Interpreter; Todd Mitchell, Court Reporter.

Competitive Rearmament of the German Navy

A. With the rise to power of Hitler he gave me the following orientation: That the objective of foreign policy was never to antagonize England, Italy, or Japan, and that he would always be willing to concede to England naval supremacy because of her world position. If one is to build up a navy, one must always follow an example because the navy cannot be constructed as an army can increase its divisions. Therefore our navy, like all navies, must be built to fit the combat situation at hand. Inasmuch as England was out of consideration in our navy decisions, the remaining navy powers were Russia and France, but he declared that in no way would such a war be likely against Russia or France. Inasmuch as the navy had to be organized according to an example, we took as our model the French Navy. Now, while we had our armored units, permissible under the Versailles Treaty, of 10,000 tons and equipped with six 28-centimeter guns, and with a speed of 26 sea miles, the French created the Dunkirk Class with eight 33-centimeter guns and a speed of 28 sea miles, and it was explicitly stated by the French that these Dunkirk types were built in order to overpower our navy. England built thereafter the King George Class at a speed of also 28 miles but with 35-centimeter guns, and France followed with the Richelieu Class equipped with 38-centimeter guns and England then followed in turn with the Beatty Class and 40-centimeter guns, while the United States of America had introduced the 40-centimeter guns long ago. I only cite these sequences in order to show that it is the general naval policy to outdo the navies of other countries because one never knows with whom one will have to conduct a war. It is the intention of all navies to build ever stronger units. These matters were candidly discussed in the special magazines, and from that point of view you can consider any naval officer as a war criminal. Because Hitler told me that England would, under no circumstances, be considered as a war opponent, we organized our navy according to France, which had the second strongest navy; and the first two ships, the Scharnhorst and the Gneisenau, were modeled after the French Navy, although not so strong but at a slightly higher speed, had nine 28-centimeter guns, and, because of our speed, could easily get away from the French ships. When we received the news about the Richelieu Class of the French Navy we built our ships also with 38-centimeter guns.

Q. That was the Tirpitz?

A. Yes, and the Bismarck. In 1935 the Naval Agreement provided for a ratio of 35-100 in order to show that we would not aspire to the same strength as the English Navy, and in 1937 a second Naval Agreement was concluded with England concerning the quality of the navy, that is, its size and lifetime. In 1938 the mood in England toward Germany became more unfavorable. I believe that Ribbentrop bears responsibility for that because he was very unwise in his whole behavior. Therefore, in the fall of 1938 Hitler came to the conclusion that we ought to direct our strength in ships along the lines of the British Navy because it may be that his plan not to conduct war against England might not be capable of realization; that is, not the strength of the navy altogether but the strength of the type of ships. For us to attain the size of the British Navy was impossible. Therefore, Hitler ordered me in the fall of 1938 that plans be made according to which our navy would obtain within 7 or 8 years a certain strength with naval units able to withstand the British Navy guns.

Q. Ship for ship?

A. Yes, ship for ship. This plan was called the "Z" plan; possibly this was the last plan we put in effect, and it was intended to consummate this program by either 1945 or 1946. And, as this document shows, which is dated December 1938 (Hela),* it seemed that Carls, then Admiral and Chief of the Fleet was asked to submit his opinion in connection with the plan "Z", and here he says, we will need six battleships, and he expresses himself about the individual type of ships which he thought were necessary, and, in case that England would lead a war against us, economic war would be the proper means. One could not conduct such an economic war exclusively with submarines but it would be necessary to conduct it with large ships, cruisers, and auxiliary cruisers.

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. What were the circumstances under which this study was prepared by Carls?

A. It seems as if such a request came from me to the commander-in-charge. I pointed out that in contrast to Hitler's former conception of our relationship to England and their present attitude that it was conceivable that a war may occur between England and Germany, and, consequently, the formation of our navy would have to be adapted to theirs. The objective in such a war would be to secure ocean communications and free access to the sea. Such a fight would essentially be a defensive action because we were not strong enough to act otherwise, but we had to contemplate this by means of the economic war since we could not hope to defeat the British Navy, as such.

Q. The indication is in the first paragraph that the colonial matters would not need be settled by peaceful means, is it not?

A. No. It seems here that if Germany, according to the will of the Fuehrer expected to secure world power it needed, besides certain colonial positions, to secure sea communications—

Q. (Interrupting) It is there (indicating in the document) in the second paragraph—the second sentence—

A. (Interrupting) Yes, Carls says that if Hitler would pursue his objectives it was probable the war would come with England—the war which up to then Hitler did not think probable. The Navy in its original plan had oriented itself not toward England because it was not deemed likely that a war would occur between England and Germany. Now this approach had to be corrected because such a war was a real possibility.

Q. Up until that time the orientation of Hitler and the navy excluded the possibility of a conflict with England?

A. Yes, and their ship types were not our model.

Q. And in September, 1938, it was contemplated that the policy of Hitler would result in the possibility of a conflict with England?

A. Yes. Hitler himself did not believe in that. Hitler had, on the 23d of August 1938, in an important speech, enumerated all the reasons why he did not think such a conflict would be probable between England and Germany. The Navy was shocked by the idea that war would occur between England and Germany because it was clear to them that as and when such a war would break out we would be much inferior to the British Navy.

Q. Did you request your subordinate officers, such as Carls, to prepare a study such as this concerning what action they would recommend for the purposes of such a war—or—how did Carls happen to prepare this?

A. I am certain that I had requested this of Admiral Carls because he was Chief of the Fleet.

Q. And similar studies would undoubtedly have been prepared by the Operations Division, I suppose?

A. Certainly—this came through us to the High Command and served for the basis of our "Z" program later on. Carls said that quite likely if such a war would ever break out it would be launched by England against us because of our political attitude. That in such a case, also, the entire Empire, as well as France, probably also Russia and a number of foreign nations would join England, so that it would become again a world war. May I add something to this: In the contest of the development of the European navies, to which I have referred recently, I wanted to add here that the British Navy, quite apart from tonnage, strength, and speed, claimed a 2 to 1 standard ratio; that is, the British Navy was to be twice as strong as the two next strongest navies together, for example, France and the United States, maybe at times also the Russian Navy, and at times the British Navy even claimed a 3 to 1 ratio. I mention this only in order to point out the strong armament contest, and also that the Navy in its construction program had to take an example from other navies according to their political aims. I also point this out in order to make it understood how this was a very large competitive armament program.

XI. FRITZ SAUCKEL*

Excerpts from Testimony of Fritz Sauckel, taken at Nurnberg, Germany, 12 September 1945, 1015–1215, by Major John J. Monigan, Jr., CAC. Also present: Capt. Jesse F. Landrum, AGD, Court Reporter; Mr. Bernard Reymon, Interpreter.

Hitler Legalizes the Slave Labor Program.

A. I was then [1942] told by the Fuehrer and by various Government agencies that the use of foreign workers within the occupied territories would not go counter to the conventions of The Hague. The Fuehrer set forth that those countries had surrendered unconditionally and had governments which had been shaped according to his desire. I then received a definite order to mobilize workers in those countries and, inasmuch as this could not be carried out through voluntary methods, to use the same methods of compulsory conscription which was enforced in Germany. The Fuehrer added that Soviet Russia was not a party at all to the Hague Convention; furthermore, that in the countries which had surrendered he had left millions of war prisoners who had been immediately released. If too great difficulties were created for him he (Hitler) would be compelled to take back again those prisoners of war. I had to satisfy myself with those explanations of the Fuehrer and to carry out my task. I then received the necessary powers and was placed under the authority of Reichsmarshall Hermann Goering, in his capacity as the head of the Four-Year Plan. To carry out the prescribed task, I received from the Labor Ministry two departments: namely, Abteilung 3, which was the department of salaries; and Abteilung 5, which was the department of manpower. I was not entitled to set up any new agencies, but was to be in touch with and to apply to those new government departments which were already in existence in the various ministries and in the Wehrmacht. I could be assisted by various other organizations. This could only be possible in communicating with them, not in issuing to them any orders, as I had no right to do so.

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* See also Document 3721–PS, Vol. VI, p. 428; 3722–PS, Vol. VI, p. 459.

The first principle was that the foreign workers were to be treated and paid in the same manner as the German workers. The second principle was fair, just, and humane treatment. This I have been able to carry out with all the people from the West, South, and Southeast. These people were treated and nourished and dealt with in the same manner as the German working people. Restrictions, however, were placed on me with regard to the Russian workers and partly the Polish workers. The Russian workers by virtue of orders from the Reichsfuehrer SS, which were approved by the Fuehrer and by the Party itself, received, up to 1940, less than the other foreign workers. This was justified on the following grounds: The so-called Ostarbeiter (workers from the East) contrary to what was the case with the foreign workers from the West and South, and so on, had to pay no taxes and no fees, no insurance, and no contributions to the DAF.* Upon my representation and those of other persons, we were told that if the Eastern workers, which actually meant only the Russian workers, were paid at the same rate as the other workers, they would actually enjoy better treatment as they had less expense. With regard to food, they were placed (the Eastern workers) on the same level as the German civilians.

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*Deutsche Arbeitsfront (German Labor Front), headed by Dr. Robert Ley.

Excerpts from Testimony of Fritz Sauckel, taken at Nurnberg, Germany, 15 September 1945, 1020–1200, by Major John J. Monigan, Jr., CAC. Also present: Capt. Jesse F. Landrum, AGD, Court Reporter; T/5 Harold H. Wolf, Interpreter.

Economics of the German Wage Problem

Q. You may continue with whatever country you select.

A. Since it always concerns some country, I would like to start talking about the German wage problem. In 1942, I was also charged with the department of wages of the Reich Labor Ministry under Ministerialdirektor Kimig. Before he took it over, it was Dr. Wiesil who was in charge of the office of Reichstreuhaender. I only want to make a few explanations about the regulations I received concerning the wages in occupied areas. The Fuehrer ordered that the stabilization of prices and wages must become the basic law of the German defense economy. He has mentioned it again and again. The German people's confidence was held as long as these prices remained stable and no inflationary measures appeared, as they did in 1923. A Commissar for prices was appointed at the beginning of the war, Dr. Fischboeck. Dr. Fischboeck was the successor to Wagner. While I was in charge, Fischboeck was in office. Just as Dr. Fischboeck was charged to keep prices stable in Germany and occupied territories, I was charged with keeping wages stable in those areas. Special attention was called to that by me when I took over the office. This was rather difficult because ever since the rise to power in 1933 they were unable to introduce an ideal wage policy. Several attempts had been made but no satisfactory agreement had been reached. We, as National Socialists, would have liked it. The wages for agricultural workers were unsatisfactory; that was generally recognized. Since a rise in agricultural wages would have resulted in a rise in prices of bread, it was postponed until after the war. The intensity of the defense effort, especially of the airplane industry, resulted in the fact that in various places this wage stabilization was breached and not adhered to. In the airplane industry especially, the various section chiefs concerned, by determining our wage bracket, found they could achieve more quantitative work. Thus it happened at times that people who were less skilled and less qualified actually earned more wages than skilled workers. Thus the workers who worked on the assembly line also earned more money than the man who did precision work. Unskilled workers at the assembly lines earned more money than the skilled workers who produced precision instruments because the latter received hourly wages. Even when I was Gauleiter I tried to bring about a wage compromise so that the skilled workers would be on an equal basis with the unskilled workers. This system I later tried to spread out over Germany and I succeeded gradually. This new order consisted in paying the skilled workers more than those working on mass production.

Eckloehne* refers to wages the same as we have only that it varies with the arrangement and depends on agricultural productivity of the area; and for instance, in nonagricultural areas the wage was higher. I was for striking an average between these wages all over the Reich and in various communities certain additional contributions were made in accordance with the cost of living index.

Re wages and these Eckloehne, they became a basis of the piece rates and Leistungsloehne.** Re wages and these Eckloehne, I had to keep them on a firm basis in the occupied countries. I convinced the Fuehrer that piece rates and these Leistungsloehne should not be cut because the more incentive we give to production the better the results will be. If the worker used little tricks in production he could at times receive high earnings above the Eckloehne standard. The engineers would soon find out about these little tricks that were being used: Thus it was possible for the worker to receive twice as much wages through twice the amount of the Eckloehne due to the little tricks he used in production. If the worker earned too much, the earnings were then somewhat reduced. On the assembly line of workers who worked on the same thing, that is equally applicable. This procedure of cutting down wages was called "Akkordschere"*** on piece rates. This system of "Akkordschere" was not liked and was even hated. I rescinded this "Akkordschere" regulation in the new wage regulations. We recognized the quantitative production wages even though they were way above the average production wages and nothing could be cut off these wages any more. This became the basis of the German wage policy effective in 1943 for Germany and the occupied countries. We endeavored to maintain these principles in the occupied countries. The wage standards in the countries which we occupied were naturally different. It is therefore not right that I or Germany demanded lower wage standards in the occupied countries. And higher wages were paid

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*Although this is the word transcribed by the reporter, the word used by the witness was most likely *Streckloehne* ("Stretch-wages" or special wages). It is not clear whether the word refers to the wage rate as adjusted by the cost-of-living differential, or to such differential itself.

**"Performance compensation" or incentive wages.

***Piece-rate "scissors", cut-off, or curtailment.

in Norway and Denmark and Holland. I was ordered not to lower the wages but to maintain the standard as it had been in 1942 when I took over my office. I then had to adhere to this order very strictly. I received requests from other occupied areas for wage increases. If I had granted these requests I would first have violated the orders of the Government and the Fuehrer; secondly, I would have contributed to bring disorder into the European economic system. At any rate, I could not have made such a decision alone; I needed the agreement of the German Price Commissar. This wage question was brought up at the Fuehrer's Headquarters several times and the Fuehrer asked me again and again to maintain stable wages, otherwise wages would start sliding like an avalanche and bring inflation to Europe. I must, therefore, point out that I wasn't set on increasing the wages of laborers in the occupied countries but that I wanted to adhere to the established wage standards. It is, therefore, not right that I kept wages down in occupied countries in order to lure the workers in those countries to Germany, as it says in the document referred to above. However, I do not contest the fact that in those countries where wages were lower it served as an incentive to lure workers to Germany. I have also had lengthy conversations about this with Laval. He admitted that he would like under all circumstances to avoid inflationary courses. Conferences with Laval and other people about this wage standard question were very difficult because even in economic circles this question is considered a very difficult one.

I now come to the main counter-argument to my own convictions. The main counter-argument to the orders which I was asked to carry out by the Fuehrer was the appearance of black markets. It must be noted that I, together with all the other government officials, was a staunch opponent of black markets. I want to declare most sacredly that I could not have derived any benefit from any black market operation. I and the other officers have fought against this black market because it would have undermined the confidence of the French people. It is certain that if any German officials or Germans supported and furthered the black market they have committed a major crime. In conversations with Laval I emphasized again and again the necessity of reducing the wage level to the standard of the years of 1941 and 1942. I felt convinced that just like increasing prices and profits, a strong government on the other hand should be able to reduce prices to the desired levels. I ordered that in all occupied countries, just like in Germany, all merchandise was to be tagged with a price tag which would represent the controlled price in that area.

How much that was carried out, especially in France where administration was in French hands, I don't know; but my desires and wishes were not greatly welcomed. Upon an order of the Fuehrer, it was recommended that in those French factories where workers worked for Germany or in the organization Todt, factory lunches were to be served and canteens opened where cheap food and other necessities were to be purchased at lower rates. That was also ordered for other occupied areas. I can't say whether these orders were carried out all over, but I myself visited factories in Paris where this had been instituted; I have even eaten there myself. I want to underline that fact now because at Oberursel* it was contested because such institutions would have been against my interest. But I cannot deny anything that I have seen myself and that I have experienced myself. I say that under oath. We hoped that through this measure a certain independence of the French worker from the black market might be achieved. I want to reiterate again my statement which I have also made in the Reich that the black market is like a cancerous growth on the economy. If I am told that I was supposed to know about all these black-market operations, then I must say that I have been so occupied in carrying out my duties that I had no time to conduct any investigations. I also want to add that the Fuehrer had issued an order that each department head was not to meddle into another department's business, and to keep all measures secret. This was a very strict order.

In Italy towards the end of 1942 the following took place: The Fascist Ministerrat (Council of Ministers) ordered a 15 percent wage increase. I suppose—and that is my personal assumption—they did it to make themselves popular. The Duce introduced the formula of a wage increase up to 15 percent. By the time it had reached the Italian press it read "a wage increase of at least 15 percent." The results were that in various areas prices increased 30 percent the next day. Wages—especially in Milan, as I remember—rose to 90 percent. This event became the subject of lengthy discussions in the German Embassy in Italy. Unfortunately, I was not successful in impeding this general wage increase. And the result of all this was a general alert in respect to the wage and price policy in Italy. The lamentable thing is that as far as the masses are concerned the prices increased much faster, to the detriment of the masses. Such events were also uncontrollable in the Balkans, especially in Greece and Yugoslavia. The events had taken place there already, black market, wage increases, price increases.

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*Between the time of their capture and their confinement in the Nurnberg prison a number of high-ranking Nazis, including Sauckel, were interned in a detention center at Oberursel.

Excerpts from Testimony of Fritz Sauckel taken at Nurnberg, Germany, 18 October 1945, 1710-1720, by Major John J. Monigan, CAC. Also present: 2nd Lt. Werner N. Von Rosenstiel, Interpreter; T/4 James P. Buck, Court Reporter.

Sauckel's Statement of Innocence After Reading Indictment

Q. You have now been served with a copy of the indictment in this case in which you are accused as a defendant of the commission of various crimes. It is expected that you will continue to be interrogated from time to time unless you expressly object thereto. Please state whether you have any objection to being further interrogated, or whether you consider your interests would be best protected by refusing to be interrogated further.

A. May I make an announcement on this issue. I am neither a lawyer nor do I know in any detail German or international law. Because of the honor of myself, of my family, my children, and my people, I am ready to answer any question that may be directed to me here or in a court of justice. I would like to state at this point, however, that intentionally I have not participated in a conspiracy against the rights of my own nation or against any other nation. I have acted in good faith believing that I would serve my nation. I have been a simple sailor and worker and have tried by home studies to absorb and study the contacts that constitute the life and organic composition of my nation. I have never assumed that the movement of which I became a member might lead to a wanton violation of international law. The Office for the Control of Manpower which I was required to take over in 1942, I have carried through because I was expressly told that in Germany everybody has to take the place he is ordered to take just the same as a soldier has to fight at the front. I would like to state in addition to that which I have said under oath that I have stayed away from any discussion or preparation for international actions, from discussions of a foreign policy nature or with regard to the preparation of war. The execution of my orders in 1942 I have to admit, of course, and I am willing also to be held responsible for that, but I would like to state expressly in this connection again that I have never participated in matters regarding penal institutions or concentration camps or measures of that nature. After having declared my willingness to testify here I would like to be permitted in the future to ask the advice of the Major who is questioning me at this time.

Q. Advice? Do you have any specific matter you wish to discuss?

A. I am totally alone and I do not know anybody in Germany who could be my defense counsel. I lived a rather isolated life and even in Germany I have only a very limited circle of acquaintances. I do not know whether the Major is a prosecuting official, judge, or any other official. I am aware of the fact that greater things are at stake than my person. Since I have been alone for 6 months by now I bring forward confidence to another person, this being part of my character. But I, myself, am totally unable to select a defense counsel from the list that has been handed to me. Also with regard to other attorneys from my whole country I am not informed. With regard to the substance of the questions I can of course at all times answer myself. But concerning the legal technicalities I naturally have no information.

Q. The manner of the selection of the defense counsel has not been prescribed at the present time. If there is someone that you feel would be capable of representing you, you will have an opportunity to request such person.

A. I don't know anybody of significance even in my home town. Never in my life have I had anything to do with the courts or with the police. I would never have expected this in all my life.

Q. It is not possible for me to give you any advice since I am not a judge in the case. I am an officer of the United States Army and I therefore cannot advise you.

A. Where could I then obtain some advice as I am alone?

Q. Of the people on this list which was given to you, perhaps some person could be selected who could talk to you about it.

A. Then I will have to leave it to a blind chance. In conclusion I would like to state a few days ago on the suggestion of Major Kelley,* the physician, I have delivered a rather detailed description of my life—about 20 pages. And I should appreciate it if you would ask Major Kelley to deliver this description of my life and perhaps pass it on to the International Tribunal. I would like to express before the Major that I never in my life thought to commit a crime and that the only motive of my joining the party was my love for the German worker and the German nation. And for this reason it is impossible for me to consider myself a criminal, because otherwise I would not have stayed alive. But I would like to state at this point that I have not a thought of committing suicide or doing anything against my own life or to deny any testimony whatever.

Q. You understand that the indictment is a series of charges and you will have an opportunity to present your defense.

A. Yes.

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*The Nurnberg prison psychiatrist.

XII. FRANZ VON PAPEN

Excerpts from Testimony of Franz von Papen, taken at Nurnberg, Germany, 3 September 1945, 1125–1215, by Mr. Thomas J. Dodd. Also present: Rudolf Pressburger, interpreter; S/Sgt. William A. Weigel, Reporter.

German Governmental Crises, 1932—1933.

Q. [In English] Before you became the Chancellor, did you hold any other political position excepting the membership in the Prussian Diet?

A. [In English] Political position, no.

Q. Who appointed you Chancellor in 1932?

A. Field Marshal von Hindenburg, then President of the Reich.

Q. And you served in that office for how long?

A. Until the 2d of December, possibly, '32.

Q. And thereafter, what, if any position did you occupy?

A. I had no position up to the 30th of January, possibly, '33, and then on the order of the President of the Reich, I formed the government of Hitler. I took the post of the Vice Chancellor.

Q. I understood you to say that you ceased to be Chancellor in December of 1932?

A. Yes.

Q. Why did you cease to be Chancellor in December of 1932?

A. Well, it's a long story.

Q. As briefly as you can, tell us without going into too much detail at this time.

A. You know that the idea of my Chancellorship was to modify in some way the German Constitution, because we considered that the authority of the Government under the Weimar Constitution was too weak, too small. The constitution of every new government took a very long time. One who knows history knows that it sometimes took weeks to form a government. The president had to deal with all political parties and so on. And at the end of the time of Mr. Bruening, the situation was very much confused, and many people considered that we should get out of this difficult situation only by reform in some way of the Constitution, giving it a stronger government. During the time I was Chancellor, we consulted two times with the Reichstag President and tried to get a better majority. We failed. We didn't get it.

Q. When you say "we", do you mean the political party in which you had membership?

A. No. I mean, I took the Chancellorship quite apart from the political parties. That was the idea. The idea of the Reich Minister in forming the government was not to have a party government, but to have a government of independent men. Now then, we first appealed to the German people to elect a new Reichstag and so the second time we got a better result. For instance, we took between forty and fifty seats of the National Socialists. We couldn't get a majority, and then it has been clear that it was of no use to rest on the results of the Reichstag at that time, and at the beginning of November or at the beginning of December I presented my solution to the President and then went along the organization of von Schleicher who in some way was the originator of my government. Von Schleicher and myself and the Field Marshal, between them there was a long conversation of what to do. In that conversation I put down as my position this: I said, "There is no use to dissolve the Reichstag at this time, the third time. We must go ahead. We must try to change, to modify, the Constitution in the way we intended to do and for that time, say, about three or four months, send the Reichstag people home and then put a new constitution before them or, before the national assembly." Hindenburg, as you know, was very severe to his oath made to the Constitution as President of the Reich, and he always had declined to act against his oath, certainly as he was a man of very great responsibility. But this time he was of my opinion. He said, "Yes, I see there is no other way, and it is a necessity to the state to act and to see that the government should come out of this mess and I am ready to do so." Then von Schleicher put down his opinion. He said, "We do not need to go that way. It is not necessary. I see another way. I shall be able to split the National Socialist Party in two and then we can form a majority of the present Reichstag and you need not depart from your oath and take up all these difficulties of the way before you that I am now to propose." We talked it over and at the end of it von Hindenburg said, "I am sorry. I don't believe in your proposal, Herr von Schleicher, because I don't think you can speak of the party." Then we are again where we are now.

So he decided himself for the proposition of von Papen and he gave the order to me to form a new government on behalf of that.

Q. On behalf of what?

A. On behalf of that proposal. Then I went home and called two or three friends of the government who were near to me, Herr von Eltz, and Guertner, the Minister of Justice, and told them the proposal. They said, "Well, we are quite ready to go with you. We share your opinion. We think it is the only way we can get to normal conditions." But you know that Herr von Schleicher since the last week goes around and says, "It is quite impossible that you take a new government. There will be civil war." I was astonished because Herr von Schleicher and I had been very close and he had never spoken a word to me about that. I said, "I am very much surprised. I didn't know anything about that." Yes, he told all of us that, too, "We should not in any way consent to a new government under your leadership. It would mean civil war and disturb public order in every way."

I said, "Well, that is a new situation. I must stop negotiations with you and call the whole cabinet tomorrow morning." I did it. The next morning the cabinet went together and I told them about our negotiations with the president. Then I repeated that von Eltz and Guertner told me last night that Herr von Schleicher was very anxious not to go that way, he feared there might be great difficulties in the country, and I begged von Schleicher to express his opinion about it. Herr von Schleicher then arose and said, "Well, we have thought it over in the War Ministry and I have with me Colonel Ott", who later has been Ambassador to Japan. He on his honor made a war plan under the conditions if there should be uprising whether the army would be strong enough to protect the railway communications and have order in the country. This study showed us that if there was a general strike and unrest in the country, we can't do it with the force available. We made Colonel Ott come in and he made a long conversation before the cabinet about that and at the end of it I arose and said, "Well, I see it is quite another condition. In yesterday's conversation with the President of the Reichstag no word has been said about that and I must go for the support of the president." So I did. I went to see Hindenburg and I told him about it. The old man was as much surprised as I was myself. Then he rose and said to me, "Well, you may perhaps think me a feeble man, but I am too old to see my own Fatherland in a civil war. Then as bad as this is, I must decide myself to charge Herr von Schleicher to take the chancellorship and to try to go his way." So he did.

Then, as you know, Herr von Schleicher became Chancellor. He tried to split the National Socialist Party and he failed. And then at the end of January, two months later, he came to see the Reich President and told him that he was sorry that his plan didn't work, that he failed, and he bid the president to give him the same power and the same orders as he did to me on the 2d of December. Whereupon the President said, "No, I trusted and I had confidence in Herr Papen to do it. I can't do it as you say. We must go the only way that is possible and to see that the biggest party comes into power."

Q. Were you present during that conversation between von Schleicher and von Hindenburg?

A. No.

Q. How do you know about it?

A. Hindenburg told me.

Q. Very well.

A. And then he charged me—he made me account and charged me to form a government with Hitler. So I did it.

Q. That is very interesting, but didn't you have some conversations with the Hitler people before you were charged with forming a new government by von Hindenburg the last time in January?

A. I had several conversations with the Hitler people, certainly. When I was Chancellor I tried twice to get him into my government. I offered him the post of the Vice Chancellor twice. Twice we tried to get him in, and the second time in August when I tried to get him in, as you know, he always wanted to be Chancellor, I said to him—

Q. You are talking about Hitler when you say "him"?

A. Yes. I said to him, "The Reich President won't make you Chancellor now, because he doesn't know you enough. He has not sufficient confidence in you, but I am sure if you collaborate with him a certain time, say, a couple of months and he knows you and he knows your political ideas, then there will not be the slightest difficulty to make you Chancellor and I for myself will give you my word of honor that if that moment comes, I will quit this post as quickly as possible and get you in power then."

Q. To keep the record a little more clear, when did you first meet Hitler?

A. I think I first met him during my chancellorship—possibly '32. I never met him before.

Q. Do you recall the circumstances of your meeting with Hitler?

A. I think I met him with Herr von Alvensleben when he was connected with him and he knew me too.

Q. What did you talk about at that time?

A. We talked about the possibility of going together, I mean, of reforming. I probably told him about my idea, why I had taken over the Chancellorship and what we should do to get out of the mess. As far as I remember we talked about the possibility of my government and the idea of my government, what I wanted to do, what Hindenburg wanted to do. Then as I told you we tried to get him in.

Q. What did he say?

A. He always said he would come in, but only with the whole power.

Q. What do you mean by "the whole power"?

A. Take over the Chancellorship.

Q. What did you say?

A. I said, "No."

Q. When did you next talk to him, Mr. von Papen?

A. Twice during my government I offered him officially, always after the elections, to get him in.

Q. I see, but when do you remember as being the next time that you talked to him after that June meeting?

A. I don't remember the time of the first election of the Reichstag. It might be after the first election to the Reichstag then.

Q. Did you have other conversations with the associates of Hitler during that time?

A. I remember I have seen once in the chancellory Goering and Helldorf, who was later Police President in Berlin.

Q. Was there anyone else of his associates with whom you talked during that time?

A. No.

Q. Do you remember your next conversation with either Hitler or any of his people?

A. My next conversation—I think after the second election of the Reichstag we failed. Then he was hostile. We had no conversations whatever.

Q. When did you next see him and talk to him?

A. The conversation took place on the 6th of January in the house of Herr von Schroeder.*

Q. Who else was present besides you and Hitler?

A. None of my people but some of his men. I don't remember who it was.

Q. Von Schroeder?

A. Yes. I spent Christmas at home in the conservatory and then I wanted to go back to Berlin to get my whole household back so I was on the trip to go to Berlin in the first days of January when I got a call to meet him on this trip to Berlin.

Q. Who called you?

A. One of his men. Not he personally, but one of his men.

Q. And who suggested the place where you would meet?

A. He. I didn't know Schroeder.

Q. You didn't know him?

A. Perhaps I knew him but not intimately, certainly not enough to propose to have a conversation in his house. I think the Hitler people proposed it and I said, "Yes, I am ready." In that conversation which has been grossly misrepresented by the press and publicity I repeated to him the same idea I had before that he should enter the government as the Vice Chancellor, Vice Chancellor to Schleicher, and to see that he became Chancellor later on in winning the confidence of the Reich President, and I promised him to do my best to talk again with Schleicher that we may make an arrangement with him. That was also about lunch time when we had that conversation, and I went back to my hotel and wrote a letter to Schleicher about the conversation immediately after. But as I see the whole story now it seems to me that Schleicher had a certain interest to misrepresent that conversation with Hitler before he got my letter and before anything could be done, because I did not go straight to Berlin. I went from Cologne to see my mother who lived in Dusseldorf and I stayed there for a few days, and then to my great surprise I saw in the paper a great make-up about that conversation. Later when I came to Berlin I understood that Schleicher saw the old Marshal, the Reich President, and told him that I had made a foul play against Hitler and that the Marshal shouldn't see me anymore. When I came to Berlin, I immediately went to see Hindenburg and told him about everything and that it was a great lie. I didn't move a finger. I did not do anything against the interests of Schleicher, and I think probably it was the idea of Schleicher that I had too much the confidence of the President or he perhaps believed it would hamper his own activities and he wanted me away from the President. So he tried and asked the President not to receive me anymore, but old Hindenburg was very frank and open towards me about that. And I said, "I can't understand why." Well, there was a time when these negotiations between Schleicher and the Hitler people went on.

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*Von Schroeder's account of this meeting, which he states took place on January 4, 1933, is published in vol. II, pp. 922–924.

Q. What did von Hindenburg say to you that day? You didn't finish that. You told von Hindenburg, as I understand you, that Schleicher had misrepresented the facts of the conversation with Hitler and von Schroeder?

A. He said he believed that it was misrepresented and the President understood the instigation of the Schleicher people had misrepresented it.

Q. Did you tell von Hindenburg that it was a misrepresentation?

A. Certainly, I did.

Q. Proceed please.

A. Then you remember came the date of the elections of Lippe with the effect to give the Hitler party new power. In the meantime Herr von Schleicher failed, as you know, in his effort to split the party and Hitler realized to get the party together. During all that time I had no conversation anymore with Schleicher or with Hindenburg up until the time that Hindenburg asked me whether I would act as a Homo Regus to form a new government.

Q. About when was that if you can just recall?

A. A couple days before the 30th of January.

Q. What did you say?

A. I said, "Yes, I will". We didn't see any other way then.

Q. Between the first of January and the 15th of January you only saw von Hindenburg twice, is that so?

A. I saw him after my return to Berlin. We had been living door to door. The garden of my house had a little door that went to his garden and it may be I saw him or not. I cannot say. Anyhow, we didn't have any political conversations.

Q. Didn't you have any talks with him about the situation? It was very delicate and very acute, was it not?

A. No. At that time I didn't even know about the negotiations of Schleicher with the party. I didn't know about it and I didn't know about the failure.

Q. Wasn't that known in the political circles?

A. Perhaps. Maybe yes.

Q. Didn't you know that? In the position that you occupied, didn't you hear those stories that were going around? How could you fail to hear them? The political people all knew about that at that time, did they not?

A. What time are you talking of?

Q. I am talking of those days in January when you say Schleicher failed to achieve his purpose with the Nazi Party.

A. Yes. It may be. Certainly I would have known that, if they had been expressed. I don't remember, but I did not know anything about the idea of Schleicher to go on with the government. I didn't know that.

Q. You were talking it over, I assume, with your associates, were you not?

A. Well, who do you call my own associates?

Q. Who do you call your own political associates at that time?

A. The people of my old government.

Q. Who were they?

A. Guertner and Eltz.

Q. What about Meissner? Didn't you talk to Meissner about it at that time?

A. Maybe.

Q. Lammers?

A. Lammers, I didn't know up until the day he was appointed to his post by the new party.

Q. How about Oskar von Hindenburg?

A. Yes. Probably I met him several times.

Q. He was a friend of yours, wasn't he?

A. Yes.

Q. Of some long standing? You were quite old friends?

A. I wouldn't say friends.

Q. Acquaintances? Well-established acquaintances?

A. Well, yes.

Q. Didn't you see him quite frequently in those days?

A. I don't think—no, not in those days. He has been—Oskar Hindenburg is a very cautious man.

Q. Wasn't he quite helpful in your dealings with the old Marshal?

A. My dealings with the old Marshal, when I had a conviction of my own, I had been man enough to tell my conviction to the Marshal himself. I didn't need Oskar von Hindenburg for that reason.

Q. I am not disputing that, but nevertheless, I think you and I understand each other when I say that since you were a well-established acquaintance of his son, it certainly was helpful to you to have him there to talk with and to discuss your problems because he must have been seeing his father quite frequently.

A. Certainly.

Q. And the old Marshal relied on his son to some extent?

A. He had probably a certain influence upon his father, but I must say that much more than I had been acquainted with Oskar von Hindenburg, Schleicher has been. He was his man.

Q. I am not asking about Schleicher. The old Marshal was very stubborn about his views, was he not?

A. Yes.

Q. And wasn't it quite a job sometimes to get him to see things as you thought he should see them?

A. Yes, but I had not so much difficulty with him because we were of the same trend of thinking.

Q. How old was he then?

A. I think eighty-six.

Q. He was getting pretty feeble, wasn't he?

A. Not then. I think that he was well off up to the midst of '33, when he began to suffer.

Excerpts from Testimony of Franz von Papen, taken at Nurnberg, Germany, 3 September 1945, 1430–1650, by Mr. Thomas Dodd. Also present: R. R. Kerry, Reporter.

How Hitler Became Chancellor of the Reich

Q. [In English] Mr. von Papen, we were discussing at noontime the events of January 1933. Let me ask you this question and maybe we can get started. Isn't it a fact that Field Marshal von Hindenburg was very much opposed to the idea of having Hitler become Chancellor of the Reich?

A. [In English] Yes, certainly. He refused. We tried to get Hitler into the government and he refused.

Q. When did you first try?

A. After the first election of the Reichstag under my chancellorship. He was not opposed to take his government, but to make him the Chancellor. That he was opposed to, but then between the 2d of December and the end of January very much had changed. Schleicher, who tried to split the party, had failed completely, and the result of that failure was certainly to strengthen the National Socialists. And then there was the outcome of the second election, small as they were, but they were taken as a sign that the party was always growing bigger and bigger; so that if at the end of January he wanted to repeat the order he gave me on the 2d, that is to say to form a new government and to reform the constitution, the risk was certainly much bigger then because of the growth of the National Socialists. That was the difference between the two dates.

Q. I have the impression from what you have said that von Hindenburg was always opposed to Hitler. He didn't think that he was the kind of man that should be heading up the government, isn't that so?

A. Yes.

Q. And therefore it must be that someone or more than one person in conversation with him urged him at the proper time to change his mind.

A. Maybe. It is quite possible—

Q. Didn't you think that he should take Hitler on January 30? What did you think about it?

A. Well, when he charged me to form that government, I talked it over, talked over the situation, and I must confess I did not see that outcome. At the end of January the risk was much greater, and Schleicher said to me that there would be civil war and revolution and uproar in the country; and since he had grown up these two months in the country, if we wanted or not to have him at the top of the government, there was no other way. All we could do was to limit him with as many safeguards as would be possible, and that we tried to do. Then you will remember that in forming this government I was made President and Goering the very important post of Interior. That was the only condition of the Nazis, and we couldn't prevent that, but at that time we thought it would be possible for me as the President of the Prussian Government to get in and stop him eventually. Apart from that the members of the government were the same as my government, trustful men Hindenburg knew and I knew and we had confidence in them. The only new one was von Blomberg, who as a special wish of Hindenburg took the place of War Minister. I remember that after having formed the government and going through the new election of the 6th of March, I went around to all the party leaders of—what do you call it, aristocracy? All those except the leftists.

Q. Conservatives—not in the narrow sense but as a general term as opposed to the Nazis.

A. Conservatives. I went around to all of them and said to them that we had been obliged to form this government. It was a very hard and difficult experience. I said it was an experiment which we were going into to form in this election a counterweight. I told them we can't stay with all these old parties. You remember at the last election of the last Reichstag, 32 parties went up as candidates. I said that can't go any further. As a counterweight against Hitler, we have to get all together and put in the ranks new and younger people that will appeal to the masses because at that time the old parties were all directed and all governed by more or less old people. But the result of my endeavors was that Blomberg said to me to let them keep their old doctrines and their old people, that the people wouldn't understand it. He said, "We must stay with our old problems in our old ways." And so I failed to get them together. I am sure that if the meaning of the time had been known, if we could have seen in the future, they would have been all too ready to leave their old doctrines and form a new great party as a counterpart of Hitler's.

Q. It is fair to say, is it not, that whatever your reasons were in January of 1933, you did feel that Hitler should be taken into the Government as Chancellor?

A. Yes.

Excerpts from Testimony of Franz von Papen, taken at Nurnberg, Germany, 19 September 1945, 1030–1200, by Mr. Thomas Dodd. Also present: Bernard Reymon, Interpreter; Pvt. Clair van Vleck, Reporter.

Papen's Doubts Concerning Hitler

A. [In English] I would like to discuss a few questions. The first was, whether I persuaded Hindenburg to take Hitler prior to the time Hindenburg separated himself from Schleicher. I am absolutely sure I did not because I know that I didn't separate Schleicher from Hindenburg. I had nothing against him. I can take an oath on that. People often think that if there is some change in high personalities, that there must be some intrigue behind it. People never know that some things go mostly straight without any intrigue and so I did nothing to remove Schleicher from his post. I have done nothing to remove Bruening from his post. You couldn't very well understand how Hindenburg changed his mind.

We didn't consider one fact, it seems to me. He couldn't go back on the order given to me on the first of December, and the situation having changed with the Nazi Party then, by the failure of Schleicher to get a split in the Party. Another reason is that the Reichstag didn't move at all. If the Reichstag wanted to prevent Hitler's coming into power, they could have formed a majority for von Schleicher to keep him in office. I asked you the last time what solution you would have suggested. I said with these facts, quite evidently Hindenburg understood there was no other way and there was no necessity for me to convince him of that. Then you asked me about when I got my first doubts about the situation. Of course, my political creed is manifest. I have made hundreds of speeches, and parts of them are published, and everybody knew what I was thinking about and that is true as to the main facts of the Hitler doctrine. It was my first hope to create as much security as possible around this new government. I had hoped, as a Vice-Chancellor, that I might have a chance to work with him and for him, but in no time at all did he let me do anything. He never was away one day and there was no deputy work to do anyway. I had no department as Vice-Chancellor. I could do things which were discussed in the session of the cabinet and so on, but no more. Certainly, I had many opportunities to make opposition to him at that time. For instance, I remember when we changed our flag. I tried very hard to convince von Blomberg that it was impossible to do so. The second time that I remember, Hitler wanted to change Herr Hammerstein and replace him with a better Party man by the name of von Reichenau. I opposed that very much, but I must say that Herr von Blomberg, the War Minister at that time, had been already so much enveloped into the arms of Hitler that he opposed me. He knew that Marshal Hindenburg didn't want to have von Reichenau. He considered him much too young and inexperienced for this post, and von Blomberg went and asked for Hammerstein's dismissal to be replaced by von Reichenau.

Q. When would you place this incident that you have just talked about in time?

A. I think it was in the summer of '34. The non-fulfillment of the Concordat, after it had been signed, with the consent of Hitler—he treated it just as a scrap of paper and I couldn't do anything. Then there was the persecution of the churches and the Jews at the same time. That was late in '33 and '34. Then we come to the question of the second revolution, when I made that speech in Marburg. I didn't tell you that when I came back to Berlin after that speech and heard that Goebbels had forbidden the publication of that speech in the German papers, that was the first time I gave my resignation to Hitler. Then he tried to keep me back and said, "Well, I will straighten it out. You see, it was not right for Goebbels not to give permission to publish it." These discussions between Hitler and Goebbels, if there were any, went on until the 30th of June. So the question of my dismissal was not decided then.

Papen's Part in Hitler's Rise to Power

Q. Are you familiar with the publication called "Das Deutsche Fuehrer Lexikon"?

A. It may be that I have seen it.

Q. Do you know what it is?

A. It is the "Who's Who".

Q. You know it was put out each year in Germany after the Nazis came to power, wasn't it?

A. Yes.

Q. Had you ever seen the edition of 1934 and 1935?

A. No.

Q. Then you don't know how it describes you there?

A. No.

Q. Have you ever heard that it says that your political activities made possible the rise of Hitler to power?

A. No, I haven't.

Q. You are not familiar with that?

A. I am sorry, I haven't read it yet. That to me is somewhat strange because, so far as I know, the Party never said a word about my political activities that helped them to get into power. Everywhere they succeeded by their own power and by their own skill.

Q. So you were really more or less an innocent bystander in all of these goings-on in January of 1933, is that it?

A. A bystander for what?

Q. You weren't involved very much. The Hitler people left you out and you were consulting with von Hindenburg, but you weren't promoting the interest of the Hitler people at all?

A. As I told you, when I got the conviction that Schleicher had failed, with the splitting of the party, and Hindenburg had not the intention to go any other way—I mean the way he told me on the 2d of December—then there was no other way out. May I just say this: in our parliamentary life, the taking in of a Party growing stronger every day is the ordinary way, but keeping the Party out is the extraordinary way and so why shouldn't we try? I mean as I told you, the program of Hitler had some good points in our eyes and the people who adhered to his Party came from all walks of life, not all bad elements. May I remind you of this: I remember in July or August when I was sitting in my home as Chancellor of Germany, in '32, when Mr. Schacht came to see me. He is a very intelligent man and it was in the presence of my wife. I have never forgotten it. He said to me, "Give up your place. Give it to Hitler. He is the only man who can save Germany." I remember it. He meant by that to say that I was not the only man believing that the experiment could be made.

Removal of Social Democrats from Power in Prussia

Q. After you became the Reichskommissar for Prussia, you proceeded promptly to depose a lot of these people who had been opposed to the Nazis?

A. It wasn't because they were opposed to the Nazis.

Q. Well, you did depose them, nevertheless, didn't you?

A. I did depose them, yes.

Q. Tell us your reason.

A. One day after I came back from the Lausanne Conference, Herr von Schleicher came to see me and said that he was in possession of very interesting news from the Ministry of Interior of Prussia. He probably had a confidant there. The news was telling that the Social Democrats, then in power in Prussia, were dealing very intimately with the Communists and so it would be necessary to remove the Socialist government in Prussia. I don't remember the particulars, but the material was there and it was shown to the President of the Reich, von Hindenburg, and the idea of Schleicher was to remove the Socialist government there and institute a Reichskommissar. As I couldn't fulfill this duty, as a Chancellor having much more to do than I could, we agreed to take Herr Bracht, a man of the Center Party, a well-known man, a very good administrator, and he accepted and took it. Then I think it was the 20th of July in '32 the government was removed.

Q. Before we go any further into that subject, that was an illegal act, was it not?

A. No, certainly not.

Q. Didn't the Supreme Court say that it was?

A. It had been treated by the Supreme Court of Leipzig later on because it had been fought by the Social Democrats, but it was not illegal because the Reich President had signed the act on account of his possibility to sign an emergency decree.

Q. But the effect of it was to remove from places of prominence and importance, the democratic forces in Prussia?

A. You mustn't mix up the Social Democrats at that time with the general democratic forces. We had no desire to remove democratic forces anywhere, but the situation was not so simple as you perhaps may think it.

Q. It aroused a lot of feeling among the so-called democratic forces in Germany at the time?

A. No, not the democratic forces in Germany. It aroused feeling in the single states. They were anxious that we might do the same thing with them and incorporate them in the Reich. That was the main reason for the anxiety, not any feeling about the democracy.

Q. Didn't it further affect the Nazi Party's relations with the Centrists?

A. In Prussia things were quite different than in the Reich. In Prussia the Center Party had dealt with the Social Democrats since about ten years, I may say, since the war was over. As I told you, I have very often tried to get a coalition between the Center Party and the other parties, the middle parties of the Reich center, but they never wanted it. They were too closely connected with the Social Democrats and they always had dealings with the Social Democrats. The dealings were like this: the

Social Democrats, as reigning in Prussia, got two posts here, or three posts there, and the Center Party got one over here. So they made dealings all the time and we considered that not a very good idea for the ruling of the country. But there was another difficulty perhaps you wouldn't understand as a foreigner. The Reich had nothing to say in the interior things of the whole administration of the country. It was all Prussia and the Ministry of Interior of the Reich had nothing to do with it at all. So it was when the police matters, the Prussian police ruled the country, and even before my own home, the Chancellory, Prussian police were posted. So if, for instance, it were true that the Social Democrats had to deal with the Communists, then one good day I might have been arrested by the policemen and the Reich Chancellory put away. It is difficult to understand this situation, I imagine.

Q. A little later on the National Socialists tried to effect an agreement with the Centrists, did they not?

A. In Prussia?

Q. In the Reichstag. You had some difficulties. Do you remember the vote?

A. They were all against me, if you call that a coalition in that instance.

Q. The reason for that was that you hadn't gone far enough for the Nazis and had gone too far for the Centrists, isn't that so?

A. Yes.

Hitler's Conferences with von Hindenburg, 1932

A. I know that twice during my Chancellorship, Hitler had audiences with Hindenburg.

Q. I am thinking of the first one, the one that took place shortly after this overwhelming vote in the Reichstag and the dissolution of the Reichstag. Do you recall that Hitler had an audience with von Hindenburg about that time?

A. Yes.

Q. Were you present at that meeting?

A. No. I was not present. I was not present at any discussion between Hindenburg and Hitler himself.

Q. You must know about what took place there that day?

A. Yes.

Q. What happened?

A. The idea was to get Hitler into the government as he wanted to be Chancellor. Hindenburg refused.

Q. He got a very cold reception from von Hindenburg?

A. I think he did.

Q. When was the next time that he was received by von Hindenburg?

A. After the second election.

Q. At that time the Nazis had lost considerably in the voting?

A. We got about 40 seats, yes.

Q. Were you present when that next audience was held?

A. Personally, no.

Q. What happened that day?

A. I think he had several audiences, two or three, I think.

Q. Hadn't you suggested to Hitler that he seek a second audience with von Hindenburg after the election and after the National Socialists had lost considerably, didn't you suggest to Hitler that he again see von Hindenburg?

A. It may be that has been suggested by me.

Q. Why did you make that suggestion then?

A. In my desire to take him in the government.

Q. The National Socialists were not as strong as they had been before the election?

A. They were not strong. For myself, I saw it a better chance, having them weakened, now to take them in. I had many reasons to think that I could succeed.

Q. Hitler refused?

A. He refused flatly, yes.

Q. About when was that?

A. It would be in September, I think.

Q. 1932?

A. '32. Yes.

Reasons for Papen's Resignation from Chancellorship

Q. It was in November of '32 that you resigned as the Chancellor, is that so?

A. Yes.

Q. I wish you would tell us a little bit about the events leading up to your resignation. How did it come about, just what happened?

A. After we had failed to get the Nazis into the government, and we couldn't form any majority in the Reichstag, it was obvious that I should offer my dismissal to Hindenburg.

Q. And von Schleicher suggested that perhaps it would be better if you resigned, is that not so?

A. Yes.

Q. And he told that to von Hindenburg, didn't he?

A. Yes.

Q. And isn't that when you began to have your difficulties with von Schleicher? Up to then you had been his protege, more or less?

A. Yes.

Q. From that time on, you and von Schleicher had trouble?

A. From the day of that discussion, from the second I may say, never before. I didn't want to make any trouble in any way. I wanted only to have success in our work and I thought it better that we would go together for a certain while.

Q. I think you will agree that the events of the time of von Schleicher taking over the Chancellory, down to January 1933, would cause one to suspect that somebody was undermining von Schleicher with von Hindenburg.

A. Yes.

Q. Who do you suppose was doing it?

A. I have only a guess—no facts.

Q. What is your present guess?

A. I mean what I heard here, that Meissner had a hand in that.

Q. Meissner was a friend of yours?

A. No.

Q. Didn't you often talk with him and Oskar von Hindenburg during these days, between November, when von Schleicher took over and January '33?

A. I don't think so. No.

Q. You didn't really?

A. No. It has been told that he has been in peculiar difficulties, and that perhaps the Nazis have thought about that and helped him out and he was thankful to them and, therefore, he tried to straighten out the alliance between the Nazis and Hindenburg. That may be.

Papen's Desire for Nazis in the Government

A. I didn't in any way influence Oskar von Hindenburg to influence his father to take the Nazis into the government.

Q. But you had become convinced yourself that they had to be taken in?

A. Yes. I had.

Q. Von Schleicher wasn't convinced?

A. He certainly was not.

Q. The old Marshal von Hindenburg wasn't convinced?

A. I don't know the feeling of von Hindenburg in this question of days. He hadn't been convinced up to January—

Q. He didn't want the "Austrian Corporal" as the Chancellor in those days?

A. Certainly not.

Q. You were about the only one of recent prominence who was convinced then, is that so?

A. As I told you, I had been convinced all the time that the best thing was to take the Party in.

Q. You were working for that purpose then, from November on to January, is that a fair statement to make?

A. No. That is wrong to say that I worked for that purpose. I gave Schleicher credit to go his way and to do what he wanted. I had no idea to oppose him in any way or to separate him from the Marshal.

Undermining and Dismissal of Schleicher

Q. I'm not saying that you told him, but I say you certainly had known that that story (that Schleicher was planning the Potsdam putsch) was told the old Marshal about von Schleicher, hadn't you?

A. Yes.

Q. Did you ever tell the old Marshal that it was not true?

A. I never went into the story. I only heard it in these days and I couldn't, as an old officer who had served for twenty-five years in uniform, charge von Schleicher with making a revolution against the Marshal without having any fundamental news. How could I?

Q. I should think not. I should think you would have been quite disturbed when you first heard of it.

A. Certainly I was disturbed by any such possibility.

Q. Didn't you go to the Marshal and talk with him about it?

A. No. If I hear a rumor—

Q. This was more than a rumor, this was the straw that broke the camel's back with the old Field Marshal, wasn't it? Is that not actually what caused the dismissal of von Schleicher, what really precipitated the rise of Hitler?

A. I can't tell you. I have never talked about that with von Hindenburg. One man who must know, perhaps, is von Blomberg because Herr von Blomberg was a man of the choice of Hindenburg, who put him at the head of the Army, the post of War

Minister. When he arrived he was a General. When he arrived he came to see me at my home and I told him to be careful that Schleicher didn't make any difficulties for him. Then he went to see Hindenburg and he knew everybody in the Ministry. He must have known whether there was any reason to believe that Schleicher was planning a putsch or not. Then he must have said it to Hindenburg.

Q. Hindenburg had always had confidence in von Schleicher?

A. He certainly had, yes.

Q. Someone of very persuasive power must have told him that story about the putsch, to change his mind about von Schleicher, someone with great influence?

A. It may be, but please don't underestimate the change in the Marshal's mind that went on on the 3d of December.

Papen's Opposition to the Nazi Doctrine

Q. By the way, did you at any time ever accept the fundamental principles of the National Socialist Party?

A. No.

Q. None of them?

Q. No. None of them.

Q. For example, the Fuehrer Principle, did you accept that?

A. No.

Q. How did you feel about the Nurnberg laws?

A. Very badly, of course.

Q. What did you think of Hitler's "Lebensraum doctrine"?

A. I fought it all my life through. If you would be kind enough to read all the speeches I made, even when I was an Ambassador to Turkey and even during the war, I considered this always the worst of policies.

Papen's Sponsoring of Seyss-Inquart in Austria

Q. How do you feel about Seyss-Inquart now, looking back on him?

A. I am sorry. For me he has been a very great deception.

Q. Did you suggest him to Hitler?

A. I suggested him. Yes. He is my invention because he was a friend of these young people, Keppler and all these men. They considered him as a sort of conservative man who was a good Catholic, a practicing Catholic, and he would certainly not do anything wrong that way, so I advised Hitler to take him, and Hitler that day when I was over there at Salzburg with Schuschnigg didn't know him. He asked me, "Is he a National Socialist?" I did everything to get him accepted.

Q. Had you had any conversations with Inquart? Did Inquart know that you were going to suggest him?

A. When I saw in what way he behaved after the occupation of Austria, I made a cut and never had a word with him.

Q. I mean before you suggested his name to Hitler, did you have some conversations with Seyss-Inquart in which you told him that you would suggest him?

A. Certainly I did.

Q. He knew that you were going to do it?

A. Yes.

Q. Were there any commitments made to him, any political commitments?

A. No. Only for the task he had been chosen for, he should be the liaison.

Q. I mean was he promised a Reichministry?

A. No, not then.

Q. Not then?

A. Hitler didn't know him. He was opposed to take him.

Excerpts from Testimony of Franz von Papen, taken at Nurnberg, Germany, 19 September 1945, 1420–1610, by Mr. Thomas Dodd. Also present: Capt. Jesse F. Landrum, Reporter; Bernard Reymon, Interpreter.

Reasons for Papen's Disappointment in Seyss-Inquart

Q. [In English] Towards the end of the morning session we had at the very end touched briefly on Seyss-Inquart and you said that he had been something of a disappointment to you. I wish you would tell a little about that. Why did he disappoint you?

A. As I told you, I had no men in Vienna, especially men who were friends of my Embassy. I had known him better; I considered him my representative; he had been a lawyer and was very intelligent, educated, and as I thought him very good, I considered him very apt to make such a post of confidence between the two governments. After all, Hitler accepted him and later on he was a member of the leading people in Austria after the Anschluss. He, in my mind, should have acted otherwise.

Q. Otherwise than what?

A. The whole policy after the Anschluss in my mind was a very wrong one.

Q. Can you be more specific about it? What, particularly, did you think was wrong about the program after the Anschluss?

A. For instance, the treatment of the churches, the Jews. Everything could have been given a settlement. As I always had told Hitler, he should give Austria the character of a federal state, just as Bavaria had. The last act I could do for Austria before I left was the day when Hitler talked it over after the parade; at the review I arranged the interview between Innitzer and Hitler that day. This interview was very outspoken between these two men—everything could have been arranged in the sense I hoped for, but it wasn't.

Religious Questions as Obstacles to Anschluss.

Q. Were you present at the conversations in Berchtesgaden on February 12, 1938?*

A. Yes. I was present.

Q. The question of the churches and the religious affairs was raised that day, was it not?

A. Certainly.

Q. What was said about it?

A. I was not present at the personal interview between Schuschnigg and Hitler.

Q. You were not present?

A. No. They were alone. I was in another room. But as it was going on, the whole day and night, intermittently I came and heard.

Q. There were some discussions about the religious situation in Austria?

A. I am sure that Schuschnigg raised that question.

Q. Why was it raised and what was said about it?

A. Well, in Germany everything was going wrong with the churches; persecutions were going on. It was one of the main points in my mind why Schuschnigg was opposed to Anschluss. I am quite sure that it was the main point of discussion of that day.

Q. Well, my question is, who arranged the agenda for the conversations, who first suggested that the question of the religion be discussed between Schuschnigg and Hitler. Did you?

A. I can't remember that; there were lots of questions raised that day about policy of the two states, and I couldn't honestly say whether he raised it or not.

Q. Weren't you somewhat fearful yourself?

A. I have all the time been fearful myself. I have worked all these four years in Vienna to get this point clear.

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*See documents 2995–PS, vol. V, p. 709; 2461–PS, vol. V, p. 206; 2464–PS, vol. V, p. 208; 1544–PS, vol. IV, p. 103; 1780–PS (entries for 11, 13 and 14 Feb.), vol. IV, p. 360.

Papen's Knowledge of the Rearmament Program

Q. When was the first time you became aware of the rearmament program in Germany?

A. In the cabinet sessions where I was present in the years of 1933 and 1934 up to June 1934, the question has been discussed as to how we could relieve the unemployment by rearmament.

Q. The answer to it is that you were rearming from 1932 or 1933 right on; isn't it so that it was stepped up in later years?

A. We knew it, certainly. Rearmament—I wanted us to have an equal standing with the other nations from that point of view.

Q. Wasn't there a time when it was perfectly clear to you, as an old soldier, that the rearmament had reached a point where war was practically a certainty? You must have known that; you were from the Army and had a military education.

A. That is never a decision of the soldier, Mr. Dodd. You cannot be strong and peaceful. But when, for instance, in the middle of August 1939, I came to Germany on account of the death of my mother who died on the 15th of August, I went to Berchtesgaden. I was told that Ribbentrop was going to Moscow the next day to make a treaty with the Russians. Then I was, I may say, surprised with joy, because in my mind that was the surest way to prevent any war; so I never considered the question of rearmament a reason to go to war.

Q. Wait a minute. By that time Czechoslovakia had been completely swallowed up, hadn't it?

A. Yes.

Q. Are you trying to tell me in August 1939 you were surprised at the rearmament preparations?

A. Not of the rearmament preparations.

Q. Of the war preparations?

A. But you mean that rearmament means war and I say it wouldn't mean war in itself. It is not so, if it is in wise hands.

Q. I think you know what I mean.

A. And after the experience we had—

Q. I don't think you are giving me any direct answer to that question. I think you have quibbled about it.

A. I realized the extent of the rearmament program when I was in Austria, since it was clear to me that those hopes achieved by Hitler, the Anschluss of Austria, the solution of the Sudetenland problem, all these could only be achieved by Hitler through a preparation brought by military force. It goes without saying that such military power may be used both for peaceful means and for military purposes.

Hitler: "The Greatest Crook I Have Ever Seen"

Q. When did you first form definite conclusions about Hitler as a personality?

A. Well, I thought of it perhaps like a majority of the German people thought.

Q. What I want you to answer is this: What is your present opinion of Hitler as a personality?

A. That he was the greatest crook I have ever seen in my life.

Q. When did you make up your mind about that?

A. Only after I have known the facts under which he started to go to war.

Q. When did you know the facts about him? I want to know about when you made up your mind.

A. Some of these facts I have only known here in prison after I had read the book of Mr. Henderson, the British Ambassador in Berlin.

Q. When would you say that you really made up your mind?

A. When he started to war.

Q. 1939?

A. Yes. 1939.

Q. After that, you didn't think very much of him?

A. No.

Excerpts from Testimony of Franz von Papen, taken at Nurnberg, Germany, 8 October 1945, 1815–2200, by Mr. Thomas J. Dodd. Also present: 1st Lt. Joachim Stenzel, Interpreter; S/Sgt. Horace M. Levy, Court Reporter.

Papen Soothes Distrust of Hitler

Q. [In English] Do you recall Schuschnigg's telling you that he didn't think he could rely on the word of Hitler? Did he ever say that to you?

A. [In English] Perhaps, yes.

Q. You know full well he said it. He said it many times to you.

A. He certainly was too polite to put it that way.

Q. How would he put it?

A. Perhaps in a diplomatic way.

Q. How would you say that in a diplomatic way?

A. He had some doubts about Hitler.

Q. All right, but you knew what he meant.

A. Everybody had. I had myself.

Q. Were you urging him that Hitler was the kind of man upon whom he could rely?

A. Under certain conditions, yes.

Q. You had doubts about it yourself. Why did you do that?

A. I knew him. I knew his idea was to swallow Austria over.

Q. I know, but you just said that you had your own doubts about Hitler's word, and at the time, I suppose, that Schuschnigg had his doubts. You know full well that you were constantly telling Schuschnigg that he could rely on Hitler.

A. As I say, under certain conditions; and I would explain to you what I mean by "under certain conditions."

Q. All right.

A. When it was on my mind to work for Anschluss in an evolutionary way, there were several factors very important for that. The first factor was Mussolini, and the second factor was France. Both were opposed to the Anschluss and both perhaps willing to grant a certain type of Anschluss if certain assurances, certainties were given; and it had always been in my mind, as Hitler always laid great strength upon the opinion of Mussolini, for instance, that if an agreement was made about Austria, and it had been sponsored by Mussolini, then it may have been kept by Hitler. It depended very much on the exterior situation, you see, the whole question.

First Steps Toward Anschluss

Q. I have always understood you to say that you were for Anschluss, although you have modified it some tonight and said it was a refinement of Anschluss.

A. I told you from the beginning my idea about it.

Q. Schuschnigg certainly didn't have any such idea, did he?

A. I mean in the end, as you know about our agreement of '36.* He didn't deny that Austria was a German country, and that one day we should come together. He never denied it.

Q. You don't mean that the agreement of 1936 was a formal acknowledgment for preparation for Anschluss, do you?

A. Certainly, it was the first step.

Q. What provision in it, particularly? You know that agreement pretty well.

A. Well, I know that in the first phrases it is said that Austria is a German country. Isn't that so?

Q. Was a German-speaking state with a German population.

A. Yes.

Q. But it doesn't say anything about eventual union with Germany.

A. No, but when you put that in a treaty, that is to say that we belong in some way together. We had a history of a thousand years together. That can't be denied.

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*See document TC–22, vol. VIII, p. 369.

Q. Don't you remember that Schuschnigg specifically said at the time that you signed that agreement that he wasn't going to allow Austria to become any state of Germany?

A. I don't remember that he said it, but I certainly know that he didn't want the Anschluss at that time. That is absolutely true.

Q. Do you know whether it was in 1936 that Hitler made a radio speech in which he said, "Germany neither intends or wishes to interfere in the internal affairs of Austria?" Do you remember that speech?*

A. Yes.

Q. And that Germany didn't wish to annex Austria, or to conclude an Anschluss?

A. I think he probably didn't say that he didn't want to annex it.

Q. You don't think he said that?

A. I don't think so, because he always said he wanted the Anschluss.

Q. I am quoting that speech word for word: "Germany neither intends or wishes to interfere in the internal affairs of Austria, to annex Austria, or to conclude an Anschluss."

A. What date did he say this?

Q. That was a radio speech by Hitler on June 11, 1936.

A. After our agreement?

Q. About that time.

A. The eleventh, that is the same date.

Q. Do you remember this speech?

A. No, but I remember that after the conversation of Berchtesgaden on the 12th of February, he made a speech at the Reichstag a few days later, where he spoke of Schuschnigg in very amiable terms and was very satisfied with that agreement. That I remember.

Q. I want to get back a minute. Didn't you and Schuschnigg discuss the agenda of the conversations at Berchtesgaden before he went up there?

A. No. It was clear; that is, all the questions concerning our agreements.

Q. You received a decoration after the Anschluss was effected, did you not?

A. Hitler sent me this.

Q. The Party's Golden Party Emblem?

A. The Golden Party Emblem.

Q. Do you remember the citation that accompanied it?

A. No.

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*An excerpt from this speech, which Hitler delivered to the Reichstag on 21 May 1935, is published as document TC–26, vol. VIII, p. 376.

Q. Do you remember it said that it was in appreciation of your cooperation in respect to the Anschluss?

A. No.

Q. Did you feel that you had helped to bring about that Anschluss of March 1938?

A. I felt, Mr. Dodd, that I had prepared the way to a peaceful Anschluss. This Anschluss was absolutely against my ideals, but when it was accomplished without loss of blood, I certainly was glad.

Q. Well, is it fair to say that you contributed very substantially to the Anschluss of March 1938? Is that a fair statement?

A. You should say I paved the way to the Anschluss, but towards another conclusion, not towards that conclusion whereby the army came in and so on, and certainly not towards the conclusion of the treatment of Austria later on.

The German-Austrian Accord of July 11, 1936

Q. Now, what was the importance of that accord, the real importance of it?*

A. You can see the way our relations went after the murder of Dollfuss; everything was broken off. It was so-called "Abgesperrt." Do you understand what I mean? No German could travel into Austria, and everything was cut off, and it was an awful state of affairs. Certainly this agreement was a great step to better these things, and to get normal relations between Austria and the Reich.

Q. Would you say that that was the real importance of the accord?

A. Yes. In the first instance, it was to restore peace between the countries, and to give a certain basis to certain progress.

Q. Wasn't there an unpublished agreement?

A. About the press and so on, I suppose.

Q. Whatever it was about, was there an unpublished agreement?

A. Yes.

Q. That was the really important thing, was it not?

A. Yes.

Q. What did that provide?

A. Peace, press peace, and exchange of commerce.

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*Agreement between the German Government and the Federal State of Austria, July 11, 1936. See documents TC–22, vol. VIII, p. 369; 2994–PS, vol. V, p. 703.

Q. This was the unpublished agreement about which we are now talking, this so-called "Gentlemen's Agreement."*

A. Yes, it has been written. It was published by the papers.

Q. That's right. You were talking about commerce and peace and the press; what else? Was there any other provision in that unpublished agreement?

A. I don't think so.

Q. You don't remember any? What was it that Hitler liked best about it?

A. I think he was glad that there was peace by the press. He didn't trouble much about commerce.

Q. Wasn't it about the Nazis who were in jail in Austria?

A. Yes, they should be released.

Q. That was the big thing about that unpublished agreement, wasn't it?

A. Yes.

Q. Wasn't that the real important promise?

A. That was the reason for the nonpublication.

Q. That is really the thing that you accomplished in that accord, is it not? That is the thing that really delighted Hitler?

A. Oh, I think so, yes; because it always was the main point of attack of the Party against him—

Q. And that is why you got the promotion, and that was the bacon that you really brought home, was it not?

A. No, no, I don't—I think he considered the whole thing a progress, and he considered it a good piece of work.

Papen's Version of His Position in Austria

Q. Is there anything else you'd like to say?

A. Well, my situation was very simple. I had a mission to fulfill, and I tried to fulfill it in the way I thought best for my country and for Austria; and in this way I acted between zealous troops, between all these different extreme lines, right and left; and the fact that I got on peacefully for 4 years against all the pressure of people in Austria and people in Germany, all the Austrian refugees who made Hitler hot every day—it had been something, I think, to hold that strong position for four years long.

Q. Oh, I don't deny that you did very well for your position.

A. And if he had let me go on smoothly, I am sure—I remember I obliged Hitler to recall his Gauleiter, his biggest man, Leopold, at the end of '37, on account of the revolutionary ideas that these people had.

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*See documents 1760–PS, vol. IV, pp. 305, 320–321; 2994–PS, vol. V, pp. 703, 705.

Q. You know, they were thinking of assassinating you at one time, were they not?

A. I know. That illustrates to you the idea of my position. I mean, if I held this position about four years and held Hitler back from an armed invasion of Austria.

Q. I don't mean to minimize the gravity of even the thought of assassinating, but it wasn't so much you as it was any high German official; isn't that what they had in mind?

A. No, it wasn't my person, because if I was put aside, it was as a reason to march in.

Excerpts from Testimony of Franz von Papen, taken at Nurnberg, Germany, 12 October 1945, 1035–1215, by Mr. Thomas J. Dodd. Also present: 1st Lt. Joachim Stenzel, Interpreter; S/Sgt. Horace M. Levy, Court Reporter.

Papen's Opinion of Keitel

Q. [In English] You think Keitel was willing to do whatever Hitler wanted done?

A. [In English] Absolutely.

Q. Did you hear him at any time counsel Hitler against armed intervention?

A. No.

Q. Did you ever hear him advise marching in?

A. No, I can't say that.

Q. What was your general impression of Keitel's attitude that day (11 March 1938)?

A. That the man didn't say anything. I always had the impression that he regarded Hitler as a specimen of God or something like that; and if he got an order, he'd say, "Oh, that is all right. If he says shoot those hundred people, then I would shoot them."

Nazi Misuse of Hindenburg's Testament with Papen's Acquiescence

Q. Now, I would like to talk about Hindenburg's testament.

A. In the spring of '34 when it was clear that Hindenburg's health was declining rapidly, my idea, and the idea of all people, was how it was going to be with the successor of Hindenburg. There should be two possibilities. One possibility was that Hitler would like to take over this post of head of state, and unite in one hand, head of state and head of government. That was, in my mind and, I think, in the minds of many people, the worst he could do, because it was an unusual act to do it. The second way was that he would substitute one of his lieutenants, say Goering or someone else, to be Reich President. That was neither good nor satisfying. So I came to the conclusion that the best thing we could do would be to convince him to restore a monarchy.

Q. Convince whom?

A. Hitler. And I must say that I had various talks with him about that subject earlier, and he was inclined to do it. He said to me then, "Once I have brought order and prosperity back to Germany, I am quite ready to restore the monarchy." I suggested to him to take one of the princes of the sons of the Crown Prince in his staff, that he might know him better; that he should become more acquainted with the idea; and he didn't decline that. He said that he was willing to do it, but then his whole sentiment about restoring the monarchy, which would have been the safest way for us, changed. It was when he came back from his trip to Italy. Probably it was the impression that he had by the reception from King Emanuel, I don't know. He treated him probably very badly, very cool, or I don't know why or what. Anyway, he was hurt in his feelings, and I heard from other people who talked with him that after this trip he said, "No, no monarchy at all." But it is a fact that previously that was a possibility.

So I suggested to Hindenburg to make an open testament that Hitler, if he had the idea to restore—first to give him the idea of Hindenburg—Hindenburg's words still had some value—and then to give him a possibility against his Party people that he could choose a monarchy. He could say, "This is the will of Hindenburg," in order to facilitate the situation for him; and in this idea, I suggested that, and I made a draft of the testament but you know the result of it. Hindenburg made it, signed it, and when after his death he came to Neudeck, Prussia, it was handed to me by Oskar Hindenburg, and I handed it to Hitler.

Q. Was that an authentic document that you handed to Hitler, do you think?

A. I think it was his testament.

Q. Do you recall the text of it?

A. The text, no, but the text in substance was that normal order and justice and everything in Germany should be restored as quickly as possible, and to give Germany a stable government, it would be wise to restore a monarchy.

Q. It went pretty far in praising Hitler, did it not?

A. Certainly not.

Q. Are you sure of that?

A. I mean, certainly he did not want to make a bad impression and he should say something about Hitler's doings. It probably was that he had done much for the unification. It might be in the text of that testament that Hitler made complete Volksgemeinschaft of the German Reich in getting away from this class hatred, and so on, but it would be words or praise about that.

Q. Well, there were words of praise. The last part of it was very praising to Hitler. That is my recollection of it.

A. I am glad you know it. I haven't it any more in mind.

Q. That has always puzzled me to some extent. That has always been perplexing to me, how Hindenburg, in July, or whenever he wrote this—

A. It was written about—let me see, in March I think.

Q. It is dated May 11th 1934.

A. Oh, May 11th.

Q. And certainly, Hitler had disclosed to some extent on the 30th of June a side of his personality that you couldn't accept, isn't that so?

A. Yes.

Q. Hindenburg must have known of that, as well as you did. It is very difficult therefore, to reconcile your delivery of this testament of Hindenburg's to Hitler after the blood purge of June 30th, and just before the plebiscite, so-called, or the election; the question being whether or not Hitler should combine the office of President with that of Chancellor; and that was used very effectively, you will recall, by the National Socialists in that brief but intensive campaign. Do you understand what I am saying?

A. Yes.

Q. How do you reconcile that?

A. Well, I think the necessity to convince Hitler not to accept that position as head of the state persisted. I mean, I couldn't change the text of the testament that had been made on the 11th of May. I had to deliver it. I must deliver it. How could I change it?

Q. Well, I don't know that you could have changed it after Hindenburg died, but I think you must have had ample opportunity to change it before he died, and between the blood purge and his death.

A. No, Mr. Dodd, I told you several times, that between the 30th of June and the death of Hindenburg, I was not allowed to approach him.

Q. Now with respect to this political testament of Hindenburg's, I want to get this straightened out. It is my recollection, and I think I am correct, that it was dated May 11th 1934. Do you remember the date of it?

A. No, I don't remember.

Q. Would that be the approximate date?

A. Yes.

Q. Do you remember the last part said, "My Chancellor, Adolf Hitler and his movement have taken a decisive stride of historical importance toward a great goal of leading the German people to inner unity regardless of differences of rank and class."

A. Yes.

Q. "I know much remains to be done, and from the bottom of my heart I wish that the act of National regeneration and unification may be followed by an act of reconciliation to unite the whole German Fatherland. I part from my German people in the firm hope that what I wished for in 1919, and led in gradual process to January 30, 1933, will ripen to full fruition, and the completion of the historical mission of our people."

Now, that is the last paragraph. Was that actually written or dictated by Hindenburg? Was that an authentic expression of Hindenburg's?

A. Yes.

Q. Were you there when he wrote it?

A. No. I wasn't present.

Q. But you did read it on more than one occasion after he delivered it to you?

A. No. I made a draft for him. And he may have corrected it, but then it was closed when I got it later, after his death.

Q. You know, there has always been a very widespread belief that the original Hindenburg will named either the Kaiser or a member of the Kaiser's family as his successor, and you as Chancellor.

A. No. The first may be right, the second not. I mean, he suggested that one of the sons or I don't know what, whether he suggested any person, but he suggested the reinstatement of the monarchy.

Q. An Associated Press dispatch of August 15th 1934, out of Germany, quoted parts of this last will and testament of Hindenburg. Those parts which I have read to you.

A. They have been published?

Q. Yes. They have; and no part that was ever published made any reference to the restoration of the monarchy in any form.

A. That is what I mean. The special reason for which the testament has been made, that was never revealed to the public.

Q. Was it in there when you handed it to Hitler—that is what I want to know?

A. Yes. I think so; it must have been.

Q. You ought to know.

A. That was the testament that he signed.

Q. It wasn't altered at all when it was in your hands?

A. I received it from Hindenburg, and I gave it over to Hitler.

Q. You gave it to Hitler on the 15th of August?

A. I can't remember the date, but it may be right.

Q. Shortly before you left for Vienna.

A. Yes.

Q. Now you know it was very effectively used by the National Socialists in that brief but intensive campaign, preceding the plebiscite, the voting being "Yes" or "No" on the question of whether or not Hitler was to combine the office of President with that of Chancellor. Do you remember that plebiscite, and do you remember the campaign?

A. Yes.

Q. And you must remember that this last will and testament was used widely by the National Socialists to support their wishes in that plebiscite, isn't that so?

A. I can't remember because I don't think that the last wish and—I mean the praise of Hitler contained in the testament certainly was an item for them to show.

Q. That is what I mean.

A. But there was no word in the testament that Hitler should be his successor or should be the head of state.

Q. I don't say that, but that part that I read to you was used anyway. My point is that knowing the contents of the last will of Hindenburg, as you knew it, because you had prepared a draft for him, after it had been turned over to you by his son and you delivered it to Hitler, why didn't you make some objection, or demand that the whole will and testament be made public?

A. Well, I could have done only—how should I do it? I mean the President wouldn't accept it, and Hitler wouldn't do it. At that time everything was—

Q. All right, let me ask you this then: Do you now recall any passage in Hindenburg's testament, as you received it from the hands of his son, praising Hitler?

A. I must say I haven't read that.

Q. Well, you haven't read it in some years, but it was rather an important document.

A. I mean, what I remember from the original draft, and I have no doubt that it was original then—in the testament of

11 May, there were certain remarks about Hitler, because it was psychologically necessary to say something about him, if you want to use him to make a monarchy. You couldn't say to him that all he did himself has been bad and miserable to the German public. I mean that wouldn't—I understand it from the psychological point of view. If Hindenburg wanted to make an impression upon him and have him fulfill his last wish, then he must have done it; he must do it in a general way.

Q. Don't you think it is not at all impossible that the National Socialists struck out of that will what they wanted to take of it, and substituted other statements?

A. That may certainly be, that they took out what they wanted. That is absolute—I have not the slightest doubt about it. They never mentioned this idea of instituting the monarchy.

Q. You know that was in there?

A. Absolutely. That was the reason why it was written.

Q. And was there anything in the testament about who should be the Chancellor if the monarchy should be restored?

A. No. That was a pure question of government. He couldn't put that in a government testament. There certainly was no mention of my person. I certainly would have declined it.

Q. I wonder why you ever did turn that paper over to Hitler?

A. Once it was written it should be delivered. I mean, even if I had the idea that it wouldn't be of any use then—

Q. It wouldn't bother me so much if it had been turned over before the 30th of June. I could understand your doing it then, but after what happened on the 30th of June and the days immediately following it, I have often wondered why you ever turned it over.

A. Well, as a testament, and you are asked to give it to the owner—it had to be done. What else could you do with a testament? If Hindenburg certainly could retain it, could keep it, it would have been in his power. He was actually just a—Hindenburg was the trustee for delivering it.

Q. Oskar Hindenburg?

A. Yes. Oskar Hindenburg. He had the power to retain it or deliver it.

Q. You can see the difficulty that presents itself to people who now examine the whole record. You were a figure of great importance in Germany. You were a man of great experience in the internal political affairs of that country. You knew then that this was a, what we would describe as a "gangster" kind of government, that had seized your native land; and here was the last testament of one of the last great figures of Germany. It was misused obviously in that campaign by people whom you already knew to be not trustworthy; and we wonder why you ever did turn it over to them.

A. I can only say that I suggested it to Hindenburg, drafted it, and it was a good idea to serve my people and my country, and—and if things had unfortunately changed after the death of Hindenburg, and all power was taken by Hitler, what could we do? I say that Oskar Hindenburg could publish the testament perhaps.

Q. But he wouldn't get it printed?

A. He wouldn't get it printed.

Q. Certainly, by early fall of 1934, you knew that the National Socialists had misused that document.

A. Fall, yes.

Q. You knew it then, and that was another substantial piece of evidence, if you needed more, that the Nazis were not trustworthy, that they were dishonest; that they would conceal or alter and misuse what was really almost a sacred paper, insofar as you were concerned; is that a fact?

A. Yes.

Q. So I come back to a question I asked you some weeks ago: How could you continue to serve such a government, even as a Minister to Austria?

A. I can only repeat what I said very often. I felt a very great responsibility myself about that government, and it would have been much more easy to go back to my home. Many people had emigrated. I think that the worst you can do as a patriot is to emigrate, and to leave your country. I tried to find out in what capacity and where I could help, even if it was a little bit, and I knew that I exercised a certain influence upon Hitler at that time.

Q. You still thought you had some influence?

A. Yes.

Q. Even though he had very nearly taken your life a few weeks before?

A. It is not quite clear, Mr. Dodd, whether he wanted to do that, and I always doubted it. I think it was more the idea of his gang of Gestapo people—of Himmler and those people—I don't think it originated of his own will that I was arrested and should be put on the death roll. I don't think so at that time.

Q. Well, are you now telling me that you think the outrages of June 30th were not directly traceable to Hitler's orders and directions?

A. Certainly, lots of them, but not all.

Q. I understand your statements this morning to be that you doubt that Hitler really directed the killing of all these people, and particularly didn't have any knowledge that you were to be executed. I find that very hard to accept. You were a prominent figure; you had the confidence of von Hindenburg; you were the Vice-Chancellor of the country; how can you say today that you doubt that Hitler knew that you were on the list to be executed?

A. Because that seems very reasonable to me.

Q. Well, it seems very unreasonable to me.

A. Just on account of the position I had. If he killed me, then he might be aware that even Hindenburg, in his state of ill health, would rise and give the order to the army to put an end to all this.

Excerpts from Testimony of Franz von Papen, taken at Nurnberg, Germany, 12 October 1945, 1440–1610, by Mr. Thomas J. Dodd. Also present: S/Sgt. Horace M. Levy, Court Reporter.

Papen's Justification of His Service Under the Nazis

Q. [In English] Will you continue, Herr von Papen?

A. [In English] Up to the Munich Agreement, the world, the English and British Government, Mr. Chamberlain, the French Government, and Mussolini, they all believed that it was possible to come then to an understanding, the main wishes of Germany fulfilled, and to have a reasonable and peaceful government established after all in Germany. If these people could hope so, why shouldn't a good patriot and a man, in the first place, who is responsible for all these goings-on have the same hopes, and the same convictions and the same fervent hope that it may become so? That explains my doing.

Q. My greatest difficulty has been that, as I understand the history of the times, as I indicated this morning, maybe I don't see this thing in its proper perspective, but I have been asking myself since I first talked to you, "Why didn't Herr von Papen, at some time between '34 and '44 when you returned from Turkey —why it was that you didn't disavow these people?"

A. There was no other way. You told me about Mr. Thyssen who emigrated, say, after the 30th of June, or the 4th of February. If I had emigrated to Switzerland, and had published a book against Hitler with all I knew about him, then perhaps people would say today, "He has been a courageous man. He took the consequences. He went out and published a book." I confess—I can't do it. I didn't do it. I think to emigrate and to leave your country is the worst thing you could do. I went the other way and the other way is, certainly in my mind, not less courageous, for all I had to stand in these years. Really, living in Switzerland would have been much more comfortable to me.

Q. By the way, do you know what the repercussions were of Thyssen's departure? Did it create quite a sensation in the higher circles in Germany?

A. Yes. I remember that all his property was seized then by Goering.

Q. Yes. I know that. Goering even went down and took the little paintings and things out of his house, as I remember it. That is in his book. I haven't read it in some time, but I did read it, and I recall that he complained in there that Goering took some of the paintings.

A. Ribbentrop took the house of his son-in-law.

Q. I think so. I think his son-in-law was killed, was he not? Isn't that the one who died in Dachau?

A. No, but he died in a concentration camp.

Papen's Opinion of Hess's Mental Condition

Q. Another thing. It isn't very important for the purposes here, but I think you saw Hess the other day.*

A. Yes. I was asked whether he could recognize me.

Q. What do you think? Do you think his mind is really gone?

A. It seems to be. I found him very much changed, and his face too. I haven't known him intimately. I have seen him several times in my life; but that he didn't recognize any one of these people, and the way he spoke must have been a matter of insanity, I think.

Q. You know what naturally occurs to us—is he pretending or not?

A. Why should he?

Q. I don't know.

A. As I understand his story, he was convinced that the war was a crime and he tried to get a peace, to negotiate a peace, so he shouldn't have any reason to play the idiot now.

Papen's View of His Responsibility for the War

Q. You have told me that, in your opinion, Hitler was one of the greatest crooks in history.

A. After all that turned out, yes.

Q. I mean your present opinion?

A. Yes.

Q. I wonder what you think, or if you care to express the thought—Don't you feel that there are men now living, whoever they are, who were responsible to some extent for not only the war but the events which led up to it, and some of the things that took place during it? Do you understand what I mean? Do you think there are such men?

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*The reference is to Hess's confrontation and questioning by former associates, including von Papen. See pp. 1160–1170 of this volume.

A. I am one of them, certainly, in the big sense of your question. I had a part in his rising to power. I had a part in creating his government, and certainly I have a responsibility about all the historical developments thereafter.

Q. I understand what you said about that, but do you feel that you are responsible to an extent that justifies your being declared to be responsible? What would you say to that? I don't want to mislead you in any respect. I am not trying to frame a cautious question.

A. I know, but it should be to history to decide, to weigh the motives and the acts. Certainly, in human life, there is a saying, "Nothing succeeds like success," and in that way I certainly had a great failure. I think, in the judgment of God, the motives have a better place and the ideas one had, and He doesn't judge so much of the success or of the effect of it, but the ideas or the motives.

Q. Well, as between men, knowing the history of your own career better than anyone else, and knowing the part, whatever it was, that you may have played, and knowing the results of all the play, what is your judgment on yourself?

A. I don't think, Mr. Dodd, that from the human point of view, you could say, or could the German people say that I am guilty of all this disaster.

Q. I don't say guilty of all of it, but I mean, guilty of some of it, or a part of it.

A. If you say responsible for it, I must say responsible for all of it, because when I stepped in with the Hitler government, then I had the responsibility. When I stepped out later on, the second, third acts in my life being in Vienna and Turkey, it was only done, as I explained to you in the will to do some good, and to get Germany out of this mess, to help her; and I am quite sure that in the opinion of most of the Germans, this is recognized.

Q. Well, as I see it, from having talked with you and having given some thought to it, I should suppose that the question of your responsibility would first center in whatever you feel you had to do with the helping of Hitler and his people to power, if that is the right terminology; is that a fair statement?

A. I mean, not the Hitler people. It has never been my design to have National Socialism in Germany. I wanted to have a normal life for Germany. I saw good points of the National Socialist program, the social points, the getting away from class hatred. One of the serious things in Germany was the growing of class hatred, as it was then, and getting away from that was a great relief to all of us, and it resulted in a great progress; so we were certain that we could fight Bolshevism. That has ever been his idea, his words. He fascinated the people with those words. Now, that was worthwhile to do, and I think it was legitimate and I was entitled to do it at that moment.

Q. All right. Then we come to the second phase, or I will call it the "second phase" for want of a better term, and I consider the time, dating from approximately June 30th 1934, to, let's say March of 1938. What do you say was your responsibility for what happened in that period? Do you feel you have any responsibility for anything that happened then?

A. No responsibility, Mr. Dodd, for the government of Hitler, because I was burdened with a special duty and a special task about Austria.

Q. But I consider Austria was a part of the—

A. Program.

Q. —program during that period of time.

A. Absolutely, and I was of the idea of Mr. Henderson, when he said there couldn't be peace in Germany, if Germany wasn't again united and prosperous again, and that is absolutely true, and in this way I took this job and I acted.

Q. Would you say that you feel any responsibility for assisting in the carrying-out of that part of the program, whatever the real value of it is?

A. Certainly, it was always my endeavor to assist in the reuniting of Germany and to give her, say, her equal sovereign rights and prosperity, and all that I strived for my life long. That certainly was part of my program.

Q. And besides the Austrian incident as a part of that program, do you feel that you have any responsibility for the—for example, for the cessation of civil rights?

A. No.

Q. You do not?

A. No, not one.

Q. Or the enactment of the Nurnberg laws, or any of the others?

A. No, certainly not.

XIII. ARTUR SEYSS-INQUART*

Excerpts from Testimony of Artur Seyss-Inquart, taken at Nurnberg, Germany, 8 September 1945, 1415–1720, by Thomas J. Dodd. Also present: Nancy M. Shields, BCV, Reporter; Bernard Reymon, Interpreter.

Seyss-Inquart's views on Von Papen and His Part in the Anschluss

Q. How did you get along with von Papen, by the way?

A. Fairly well. I held him as a reasonable politician.

Q. He is a good politician, isn't he? A capable one?

A. I think he is a capable politician but within the Nazi system he could not carry out—he had no good name with the real Nazis.

Q. What do you mean by that?

A. He was not considered as a real Nazi, a 100 percent Nazi.

Q. How do you know that?

A. I was told that by the Nazis themselves. They always had a certain reserve with regard to him.

Q. I am interested to know how he was able to continue as ambassador first to Austria and then to Turkey if these big men in the Nazi Party had very grave doubts about him.

A. Probably Hitler thought that such a capable man as von Papen could render quite some service, whereas a good Nazi might spill much milk.

Q. What was von Papen's attitude towards the Nazis?

A. He was very reticent, but one could sense that he was not a real Nazi.

Q. He apparently was willing to work in their interests?

A. I think and believe that all he wished for was to work in the interests of the Reich.

Q. Or in the interests of von Papen?

(The witness shrugged.)

Q. What do you say to that?

A. Well, there are people who are ambitious and I can say very little about that.

Q. What is your judgment from your association with him?

A. I think that he had a sort of intuition to serve the Reich, coupled with a desire to play a personal part, in spite of the fact that he was so badly treated by the Nazis.

Q. When and where was he badly treated?

A. Well, those are simply surmises from their general attitude. They simply didn't take him in.

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* See Document 3732–PS, Vol. VI, p. 539.

Q. He had to be in pretty close when he was in Austria as the ambassador in those days before the Anschluss?

A. They used him a great deal. I don't know whether they thought much of him.

Q. I understand you to say they never let him in and I understood you to mean by that, into their confidence?

A. Entire confidence, no.

Q. What I ask now is whether or not it is a fact that he had to be very much in their confidence during the days he was in Austria and the National Socialists were attempting to achieve an Anschluss?

A. Well, they didn't give it. I believe that the primary object of von Papen in Austria was not the Anschluss but the lessening of the tension which subsequently would have the result of bringing about the Anschluss.

Q. I don't understand that, because you know as well as I do, that one of the prime objectives of Hitler's policy was Anschluss with Germany at the time he sent von Papen to Austria as his Ambassador.

A. Well, I don't think that Hitler had any intention of Anschluss as far as von Papen was concerned. He had sent him to Austria with the chief objective of relaxing the terrible strain which was existing. Well, I would like you to understand that I am of the opinion—I was of the opinion and still am of the opinion—that if the tension between Germany and Austria could have been relaxed, then the Anschluss would have resulted by itself. This I do believe still today. I have made an outline about the question of the Anschluss, about 30 pages.*

XIV. CONSTANTIN VON NEURATH

Excerpts from Testimony of Constantin von Neurath, taken at Nurnberg, Germany, 1430–1645, 3 October 1945, by Major John J. Monigan, Jr., CAC. Also present: T/5 Gunter Kosse, Interpreter; T/4 James P. Buck, Reporter.

The Disarmament Question

Q. [In English] What was the problem in the disarmament treaty? What was to be accomplished by that?

A. [Principally in English] That was in the Versailles Treaty. Germany was obliged to disarm. We had disarmed. There was a disarmament commission in Germany. We had to disarm. In the Versailles Treaty there was one part saying that after the disarmament of Germany the other nations also had to disarm. Great Britain was disarmed, Italy was also in with not much left. It was only in France. France made from the beginning opposition against that disarmament because they used—well, there was a new technical expression, "potencia la guerre" [sic]. "We (France) have forty million inhabitants." Germany at that time had about seventy million. Therefore they said, "It cannot be done. We should have 100,000 and Germany 100,000," because there were more reserves in case of war. That was the meaning of the thing. Also, industry was bigger and better. That was the leading point on which we could not agree. England acted as intermediary. And so they came to Berlin twice when Mr. Eden was there, and between the two embassies there was continual correspondence, but such was the leading point on which we could not come to an agreement.

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* Document 3254–PS "Seyss-Inquart, The Austrian Question 1934-1938" (Vol. V, pp. 961-992).

Q. At that time hadn't the rearmament program begun in Germany?

A. No, not then. No. It had only begun in '36—'35 or '36—after the reoccupation of the Rhineland. When the Rhineland was occupied it was a real bluff There was nothing behind it. There was the 100,000 man army under the Versailles Treaty. The rearmament only began afterwards. In '36 it must have been.

Q. Did you feel it was impossible for the future of Germany in the early times in which you first took office, to carry on under the terms of the Versailles Treaty?

A. Oh, yes. Of course, yes. There was very few of the provisions left of the Versailles Treaty. Oh, there were some in reality I consider, the corridor of Poland, for instance, those naturally remained. Yes, one thing. The railways. The state railways were pawned for reparations by this agreement. The international organization of the Danube, the Rhine—there were those things, but they were not important.

Q. Wasn't it the purpose throughout the foreign policy to avoid the provisions of the Versailles Treaty either by negotiations or otherwise up until 1937?

A. No. You mean after?

Q. From the time when Hitler took office.

A. Yes, of course, and as I told you yesterday I went to Lucerne and it was settled—this question of reparations, and afterwards the equality question in '32, and there remained always the question of disarmament. It was my intention to settle those questions in order to clear the way in understanding this point. The others didn't care for it.

The Organization "Auslandsdeutsche"

Q. What was the problem of the organization for the Germans living abroad—Auslandsdeutsche?

A. It was a terrible thing for me as Foreign Minister. That was an organization entirely in the Party. The intention of it was to bring the colonies in the different states under one head, because as in Germany itself there were so many parties as heads, and that was the original intention. The first years I had a notion to deal with it because that organization was occupied with sailors only. Afterwards they began also to organize abroad in the German colonies, for instance Rome or elsewhere, to propagate propaganda and to make merely their own politics. I was in Rome until '30 as Ambassador. Until that time there was nothing to fear of that organization. I am sorry to say Hitler came into power in '33. Naturally it was very, very annoying to our representatives and ambassadors because they mixed in everything and every head of that organization thought he would be a better ambassador than the official ambassador and so on.

Q. What did they think they were going to accomplish by the foreign organization?

A. Well, the ideas were absolutely—the first thing was to get power in their hands. First they intended to have an office, and a big office, too. That was the first intention, to make themselves important. So far as I know, several of those representatives from abroad, they were mostly men who had either gone bankrupt or who had not any kind of work, or had no success in their business and so on. Mostly men who were morally not clean.

Rosenberg's "Confused" Ideas

Q. Well, Rosenberg had some ideas on that, too, didn't he?

A. Rosenberg's ideas were very confused — so confused — I would like to say something, but don't say I told it to you, because one day Hitler himself asked me to correct Rosenberg in his ideas—Rosenberg, who was the most well known representative of Nazism, and to send him to me, who was not a member of the party, well, it was ridiculous. But you see from that remark how he was judged himself. I hope I am never compelled to read his books.

Q. It is impossible to understand what he is talking about.

A. Yes. He always intended to become Foreign Minister. That was his first aim in '33. Also because I was much distrusted.

Why Hitler Made Ribbentrop Foreign Minister

Q. How did it happen that Ribbentrop finally got the job of Foreign Minister instead of someone else?

A. That's a question which has been put to me several times, and I can't answer it. I don't know. I can't understand it, especially because on the 14th of January [1938] when I asked Hitler to be relieved from my office he said to me, "But I will never make this Ribbentrop Foreign Minister." And forty days later he was in. Nobody can tell me how it would be. I can't understand it.

Q. He was seemingly unqualified for it.

A. Yes, quite. Totally, totally.

Q. There seemed to be some idea that Hitler thought that because he travelled around a lot he was a great diplomat.

A. Yes. I could only tell in a private conversation, because it is not important for this. But that question—everybody, or nearly everybody, has asked me the question, how Hitler who knew him, "How could he make him Foreign Minister?" I think the only explanation was that he was always saying, "Yes," to him, and he (Hitler) didn't like somebody to give him back-talk. I can't understand it. Hitler changed more and more every month until he became a tyrant.

The "Bureau Ribbentrop"

Q. What was the office which Ribbentrop had before he became Foreign Minister? How did that tie in?

A. His bureau was called "Bureau Ribbentrop." That was a very funny construction. When I heard of it, because it was quite secretive, it consisted of only two men—at the end about two hundred. He had all kinds of agents abroad. I think one of them was later Ambassador Abetz in Paris. He was one of them. Mostly the men were representatives of merchant firms before.

Q. Wasn't he in the express business, or something—Abetz?

A. No.

Q. Before he got in with Ribbentrop?

A. No. But there were all kinds of professions they had. I knew only one of them at all. They were all quite young men.

Q. They had not been in the foreign service?

A. No, they were not at all. They had nothing to do with the Foreign Office. It was more or less a private bureau of Ribbentrop, paid by Hitler. They had no title or anything. Later when

I was away a long time they all became ambassadors, but by title only.

Q. He took a group of his organization to London with him, didn't he?

A. Yes.

Q. This is along the same line we were talking about yesterday. A conversation you had with Mr. Bullitt on the 18th of May, 1936, concerning the Czechoslovakian matter, and in which you said that it was the policy of the German government to do nothing active in foreign affairs until the Rhineland—I have quoted here, "Until the Rhineland had been digested." Do you recall it?*

A. Yes.

Development of the German-Italian Alliance

Q. When did the alliance between Italy and Germany become fixed?

A. Would you like to hear the development of this?

Q. Yes.

A. Well, I may begin back in '33, because before I had very many difficulties, in Italy when I was Ambassador there. In '33 the relations between Italy and Germany were not good. The relations between Hitler and Mussolini were not good. Hitler aimed to come to better arrangements with Mussolini. In '34 he accepted an invitation of Mussolini to go to Venice. I accompanied him. The result of the meeting was not at all satisfactory. They didn't understand each other. Whether they had private conversation I don't know, for I wasn't there, but I had the impression that what everybody spoke passed each other. That was my impression. Their discussions didn't meet; they didn't understand each other. Then came the relations afterwards which were absolutely unexpected. Prime Minister of Austria, Dollfuss, was shot. That was in '34 or '35—without any notice. He was shot by Nazis and Dollfuss' wife was at that time staying with Mussolini when he was shot. So Mussolini was very angry against the Nazis. The relations were very bad. But later on they got together more and more, but only in '37 came the idea from Hitler's side to make an alliance with Italy. And I told you already yesterday that I was absolutely against it because I knew the Italians too well. I told that to Hitler and told him about their soldiers, but he answered me always with, "But Mussolini." And I said, "Yes, Mussolini. Mussolini is one man, and his people are not behind him. Officially, yes, they are always trying, but they are not persons to be trusted." That has been proven later on. He, Hitler, insisted, but during my time I did not give in and would not allow him to come to an alliance. Immediately when I left, Ribbentrop made it in '38. I always regarded an alliance with Italy as a "stone on our lake," as it was.

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*See document L–150, vol. VII, p. 890.

Excerpts from Testimony of Constantin H. K. Freiherr von Neurath, taken at Nurnberg, Germany, on 4 October 1945, by Major John J. Monigan, Jr., CAC. Also present: Nancy M. Shields, BCV, Reporter; T/4 Gunter Kosse, Interpreter.

The Decree for Registration of Germans Living Abroad

Q. [In English] You recall that you are still under oath from last time?

A. [Principally in English] Yes, indeed. You asked me about the decree for the registration of Germans living abroad. (Referring to decree of February 3, 1938.)* I must say I am ashamed I did not say it at once, but have you still the text here?

Q. Yes.

A. Because I must say that it was done through my initiative and the reasons I will tell you.

The reason for that decree was that we, in Germany, had a law according to which, after ten years' absence from home uninterruptedly, German citizenship was revoked. Most of the Germans abroad—and we had millions as you know—did not know that law at all and certainly they came to the consulates asking for certificates of birth and passports, etc. When the ten years had passed, the consulates could not grant such certificates. In consequence, an incessant correspondence with the home office and very much trouble resulted. So, since many years before, I had been urging such a decree to form a register where Germans could be registered with all dates concerned and to put the consular offices in a position to give the certificates. For instance, if one wished to marry, he had to produce in foreign countries, a birth certificate, etc.

That was the original reason for the decree. By this register now, as it is formed by that decree, the consular offices get all the necessary data and they can grant certificates of birth and marriage and new passports, etc. That was the reason for the decree. It may be that afterwards the AO** used the registers for propaganda but as I say, it was at my initiative that it was formed, and I only wished to explain it.

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

***Auslands-Organisation* (Foreign Organization of the Nazi Party).

Relation of French-Soviet Pact to Rhineland Occupation

Q. Do you recall the French-Soviet pact in 1935?

A. Yes.

Q. Do you recall what the position of the Foreign Office was in regard to that pact and its effects on the Locarno pact?

A. Yes. With that pact, in reality, the Locarno pact was already broken, by the French-Soviet pact. It was broken by the French because the Russians were not members of the Locarno pact although at present they are; and another effect was that it reacted as to the decision of Hitler to re-arm. That was the indirect consequence.

Q. Was it the idea that there was just an agreement between two nations without the inclusion of the other signatories to the Locarno pact, that that, in itself, destroyed the effectiveness of the Locarno pact?

A. Yes, indeed. The fact that two nations agreed, in case of need, to assist each other, it was already violated.

Q. That was the basis for the argument of the German Foreign Office?

A. Yes.

Q. That was a position which you felt to be correct at that time?

A. Yes, and as far as I remember, the signatories of the Locarno pact were informed that we thought the pact was violated through that Franco-Russian pact.

Q. Actually, your government submitted a memorandum on 25 May 1935 setting forth in substance, that position?

A. It was sent. I remember that we sent such a thing.

Q. That was relating directly to the French-Soviet pact as a repudiation of Locarno?

A. Yes.

Q. Do you remember in February of 1936, there was a discussion between the French Ambassador, Francois-Poncet, and Hitler concerning the rapprochement between Germany and France?

A. In February, 1936? Conversations about—

Q. Concerning the general relationship between France and Germany, directed towards the idea that it was not necessary that France and Germany should be enemies.

A. Yes, yes.

Q. Actually, the interview between the French Ambassador and Hitler occurred on March 2 of the same year. Thereafter, there was a request by you, as Foreign Minister, to the French

Ambassador, that the fact that the discussion had taken place should not be disclosed.

A. That I cannot remember. Wasn't it at that time that Hitler officially repeated the renunciation of Alsace-Lorraine?

Q. That came later. It was on March 6th, in his address to the Cabinet Meeting.

A. It was published afterwards.

Q. It was on the 6th of March; there was a Cabinet meeting and Hitler said he had decided to move the troops into the Rhineland.

A. Yes.

Q. Do you remember why it was that Hitler and you requested the French Ambassador not to disclose the meeting with Hitler?

A. The reason at that time I couldn't say.

Q. Do you know when it was decided to occupy the Rhineland?

A. Only a few days before. Very shortly before.

Q. How was that decision to move into the Rhineland reached?

A. Hitler gave the order to the members of the Reichswehr to prepare the march into the Rhineland, the disarmed zone.

Q. Was that decision reached after consultation among the Army people and representatives of your office—or how was it decided?

A. I knew it, yes, and I agreed, too, because that was also one of the consequences of the Franco-Soviet pact, because we had that demobilized zone—50 kilometres—and then already the Saar had come back to the Reich and there was a totally demobilized zone there and after the eventual menace of the collaboration between France and Russia, it was more or less a military point of view to have reoccupied that zone.

Q. Why was it determined to do it in that fashion by just moving the troops in, rather than by just a matter of discussion?

A. That would have been quite useless. You remember we always had these disarmament quarrels with France, and France naturally would never have agreed to it, and probably they would have occupied the Rhineland. So far as I remember, we at once notified the fact to the British Government and the French Government. Also, we notified them of the reasons why it was done.

Q. Actually, he had a Cabinet meeting with the heads of the army on the 6th of March; then there was a meeting of the Reichstag on the 7th.

A. I think the occupation must have been the 6th and the Cabinet meeting the 7th. I don't think it was discussed. The occupation orders were given to the military authorities by Hitler.

Q. I think it was the 6th, the same day as the meeting. The 7th there was a meeting of the Reichstag at noon, at which the Foreign Service people from the British Embassy and Belgium and so on, called at the Wilhelmstrasse office and you met them and gave them the memorandum.

A. Yes. I only had it in my mind that I had given the memorandum explaining the reasons.

Q. The substance of the memorandum, you remember, was that the military pact between France and Russia had resulted in a violation of Locarno.

A. Yes, but that is now nearly 14 years ago and it is difficult to have all those details in my mind, but I remember I gave them something and gave the explanation why. As a result of that pact, the Locarno agreement had no longer any significance and virtually ceased to exist and Germany, therefore, did not consider herself bound any longer by the Locarno pact and accordingly, in the interests of her right as a nation to protect its frontiers, and to preserve its means of defense, a general government was therefore restored once more, with full and unrestricted sovereignty of the Reich in the demobilized zone of the Rhineland.

Q. There was also some discussion as to whether the occupation of the Rhineland was symbolic or actual?

A. At the beginning it was purely symbolic. I think I told you it was a mere bluff, more or less.

Q. After the occupation, the other signatories to the Locarno pact, except Germany, on 19th March, drew up a proposal that the re-entry into the Rhineland was a violation of the Locarno pact?

A. Yes. They informed us, and we answered in a memorandum.

Q. Yes. In which the substance of the memorandum was that it was a request to submit the matter to the consideration of the international court?

A. Yes.

Q. And at the same time it was asked that there should be no more exploitation or sending troops into the Rhineland pending the determination of the matter?

A. Yes.

Q. And that both requests were refused?

A. Yes.

Q. What was the reason for this refusal?

A. To submit it to The Hague? As far as I remember, Hitler said, "No. I won't go to that International Court any more." After we had left the League of Nations, he had already done it before, and he did not accept the decisions of the Hague Court.

I can't remember whether we were still members of the League or not. At one time we had a representative there but I cannot say the date when we recalled him.

Q. Do you recall how the decision to refuse these considerations was reached? Was that after consultation or how?

A. In conversations?

Q. Yes. Between Hitler and you or how did it come about?

A. No, no. I cannot remember that date of our recalling our representative in The Hague, whether it was before or not I don't know. That is why I asked.

Q. I don't have a note of the time when your representative was withdrawn here but in any case he must have considered, as a separate proposition, whether he would accept these proposals or not, irrespective of whether the representative was there or not?

A. Of course, but he had already said that he did not want to have anybody meddle in his decisions.

Q. Now at that time was it apparent that the attitude of Hitler was such that he did not want to negotiate on such questions?

A. Hitler, you see, always intended to come to better terms with France and he therefore also gave the declaration that he did not think of re-entering Alsace-Lorraine. I think it must have been at that time when he declared that or immediately afterwards, to show that it was not an aggressive act but only an act to reconstitute the sovereignty.

Q. At that time, actually, the memorandum in which the diplomats were informed, carried such assurances that there was no further intention of occupying other territory?

A. Yes, certainly, but I remember it was expressly mentioned about Alsace-Lorraine, that we would not go beyond the frontiers laid down in the Versailles Treaty.

Q. You had a conversation with the British Ambassador, Sir Eric Phipps, after the 21st May speech and you gave him certain assurances that the territorial provisions of the Versailles Treaty, including the Rhineland demilitarization, was still considered to be in force?

A. Yes. Naturally I could give it clearer if I had any notes. I know the dates but I have not got anything. It is difficult after 12 years to remember all that you did.

Q. Particularly in this instance, with a matter of dates?

A. Yes, one day after the other.

Q. After the Soviet-French pact was made, was it then the intention of Germany to reoccupy the Rhineland?

A. Yes. It was afterwards. It was after that pact, I remember. That pact gave the impulse to reoccupy it.

Q. But even before that pact, it was a matter of concern to German foreign policy whether they would occupy or not?

A. Yes. It was generally viewed because it was a territory not under real sovereignty of the Reich if we could not have military posts in it.

Q. It has been suggested that the French-Soviet pact was merely an excuse physically to occupy the land, which could not have been justified on any treaty violation otherwise.

A. You mean that it was an excuse only?

Q. Yes. The decision to occupy the demilitarized zone was already a matter that had been determined, that it was a matter of conversation among the German government that it could not be accomplished by negotiations and therefore must be accomplished by the fact that it was impossible to justify the reoccupation unless there was some cause.

A. It has not been discussed before, the reoccupation, as long as there was no threat or fear of the collaboration of France and Russia; as long as it was open there was no reason to reoccupy the Rhineland except the general view that the territory was lacking sovereignty.

Q. The desirability of reoccupation was always present of course?

A. That existed always but it was not acute.

Q. And is it your opinion that if it had not been for the French-Soviet pact, that the reoccupation of the Rhineland demilitarized zone would not have occurred?

A. I could not say that. As it has been done—before that pact nobody did speak about reoccupation. It was not discussed at all or I would have discussed it with the French Ambassador and the British Ambassador, too, but it was not at all—Hitler did not have it in mind, or perhaps he had it in mind remotely, but it was not considered imminent or actually acute. The frontier was quite open to any certain invasion of the French. There was no defense at all. The 50 kilometers went nearly into Stuttgart but that was the impulse.

Q. It was no more than a vague idea at that time, until the pact made between France and the Soviet came into being?

A. No, no, no! As I say, the French-Soviet pact was the real impulse. Before that, we only had those 100,000 men. Afterwards it was done but only as a show-piece, without backing to prove it on paper.

Q. Now of course, prior to the reoccupation, the Army had drawn up plans to accomplish it upon the date decided?

A. Yes, I suppose so because it would be very bad general staff work if it had not been prepared.

Q. There was a plan which the army had and which had been prepared by General Von Blomberg dated the 2d May 1935 which outlined the military operations in which they would engage when that took place?*

A. For the reoccupation?

Q. Yes.

A. But that I don't know because these military operations were secret. I didn't know it.

Dispute Over Restoration of the Habsburgs

Q. Do you remember in February, 1937, a visit with Schuschnigg that you had?

A. With Schuschnigg? Yes. I was in Vienna.

Q. Do you remember on that occasion whether there was some discussion suggested by Schuschnigg concerning the possibility of the restoration of the Habsburgs?

A. Yes. Schuschnigg always played with the idea of taking back the Habsburgs but he had great opposition in his own cabinet against it. I remember that the return of the Habsburgs was a thing which did not directly touch us but it was not useful for Austrian relations after all that had happened with the Emperor Charles, as I remember.

Q. From the standpoint of the German Foreign Office, would it have made any difference whether the Habsburgs had been restored or not?

A. We foresaw still greater difficulties with Austria. I know, for instance, that the Austrian Foreign Minister Schmidt was absolutely against the coming back of the Habsburgs, and also the Austrian Minister of Defense.

Q. Did you indicate to Schuschnigg how such an action would be viewed from the standpoint of Germany?

A. Yes, I think so. I must have done. I certainly did it but I cannot tell you in detail. In general, I said to him, "Don't do that because it will make more difficulties in Austria, etc.," because the Nazi movement had already grown enormously, and they did not like a monarchy, so they were against the coming back.

Q. It has been said that in that conversation you suggested to Schuschnigg that if they did restore the Habsburgs Germany would march.

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*See document C–139, vol. VI, p. 951.

A. It may be that I said that, because it was the view of Hitler. It is quite possible that I said that.

German Justification for Reoccupation of the Rhineland

Q. Do you feel that you made a substantial contribution to releasing Germany from the Versailles Treaty?

A. Yes, through my work in Lausanne and afterwards the Equality Agreement in 1932. There was not much more left, except the reoccupation of the Rhineland.

Q. There is something I have difficulty in understanding and that is, the connection between the reoccupation of the Rhineland, which after all, was a provision of the Versailles Treaty, and—

A. It was in the Versailles Treaty.

Q. The relation of that to the Franco-Soviet pact and Locarno. If the reoccupation of the Rhineland was justified as not a violation of the Locarno pact because of the Franco-Soviet pact, it still was a violation of the Versailles Treaty was it not?

A. Yes. That was a violation of the Versailles Treaty but on the other hand the French did not fulfill their obligations with disarmament. These two points always come again.

Q. The position then, as to Versailles, and its application to the reoccupation and the Locarno pact, is that France had not lived up to certain obligations regarding disarmament at Versailles. Therefore, it was proper for Germany not to live up to its obligations on re-entering the Rhineland.

A. That was the only one left—that question about France not fulfilling their duties as to disarmament. We thought the disarmed zone was also devoid of any effect and did not exist any more as a justified fact.

Q. Actually, at that time, the most important things left of the Versailles Treaty which were matters of controversy at all, were the disarmament and the Rhineland occupation.

A. Yes. Those two points—disarmament and the reoccupation on the other side.

Excerpts from Testimony of Constantin von Neurath, taken in Nurnberg, Germany, 1445–1545, 8 October 1945, by Major John J. Monigan, Jr., CAC. Also present: Tec/4 R. R. Kerry, Reporter.

Promises to Uphold the Versailles Treaty

Q. [In English] I am going to talk again about that period in May 1935.

A. [Principally in English] May 1935, yes.

Q. We mentioned the meeting between you and the British Ambassador Phipps; do you recall that?

A. Yes, I recall.

Q. Well, the substance of the conversation with Mr. Phipps was that the—the main thought of it, was the Hitler speech of the 21st, and the discussion went along about the second point in Hitler's speech, in which he outlined the 13-point policy. It was regarding the Articles of Versailles, which still were to be considered in effect, and the theory of Hitler as explained by you was, "Germany will respect all provisions of the Treaty of Versailles, including the territorial provisions, and any revisions which will be rendered necessary in the course of time will be put into effect only by the method of peaceful understanding."

A. Yes, that was the line on which I always worked, but to be right, I couldn't remember. But I suppose it was so.

Pre-Anschluss Pressure on Schuschnigg

Q. Now, getting back again to your visit with Schuschnigg in Vienna—

A. Yes; I have thought about it since the last time. It came a little quick then. I have discussed with Schuschnigg the Anschluss question, and especially the position of Austria vis-a-vis its neighbors; and I said to him, "All the neighboring states who had occupied former Austro-Hungarian territories are hostile to the recall of the Habsburgs." Benes had said so officially. The Hungarians said so, because he tried to come to Budapest and he was refused. The Jugoslavian minister also said they would never allow a Habsburg to come back. And Mussolini had repeatedly said to me that at the moment a Habsburg would come back to Vienna, he would occupy the whole of Austria. And in that connection, I said, "Well, that would be a development through which Germany would be touched very much," with the Italians standing only 50 kilometers to Munich, probably to the Danube and in Innsbruck and Linz. So I said, "If it should develop that way, we also would march." That was the way I remembered it.

But a very funny thing was that at the end of this discussion of the Habsburg question certainly, Schuschnigg said to me, "Well, I will tell you quite confidentially, and I beg you not to mention it to anybody, but I never thought to recall the Habsburgs, but I must play that game for political reasons." I said, "Well, if you had said this to me before, we would have saved much time," because then the question was not acute. As to the secrecy of what he told me, I said, "I must say that to Hitler to avoid any impulsive action on his side," and he agreed to that. After that meeting in Vienna, the Habsburg question was out of discussion.

Q. Now, at that same meeting, wasn't there some discussion concerning the position of the Austrian Nazis in the cabinet?

A. In the cabinet?

Q. In the Austrian Cabinet.

A. Not between myself and Schuschnigg. He always—he refused it, I know, but I think we didn't discuss it.

Q. You and he didn't?

A. I and Schuschnigg?

Q. Yes.

A. No; that was between the Party and Schuschnigg.

Q. You don't recall ever having represented to Schuschnigg that the Austrian Nazis should have representation in the cabinet?

A. To avoid any growing of the quarrel, to avoid it from becoming more acute, that was the standpoint. Hitler always asked that the Nazis should be represented in the Schuschnigg government more. I think at that time there was none, as far as I remember, outside of Seyss-Inquart. He was a Nazi, but I think he wasn't a member of the cabinet at that time. He became afterwards.

Q. Yes. At that time apparently Schuschnigg had constantly refused to permit them to be in his Cabinet?

A. Yes, he had refused it. Yes.

Q. And it was your idea that it would be better from his standpoint, in order to prevent further difficulty, to give them some representation?

A. Yes. It was dangerous from the standpoint of Schuschnigg at that time. That was also later on in 1938, after I had left office, I think; we mentioned it the last time Schuschnigg was invited to come to Berchtesgaden. That was a point of the discussion there. But only in 1938.

Q. Do you remember telling Schuschnigg that it was not your intention to have Anschluss with Austria?

A. Yes. I had discussed it especially with the Foreign Minister Schmidt. As I told you, my intentions were quite different, economically Anschluss, but politically not.

Q. Did Hitler always entertain the idea of political Anschluss?

A. Yes, he was against what I thought. He intended to have a full Anschluss.

Q. Had he had that view all along?

A. All along, from the beginning. Yes.

Excerpts of Testimony of Constantin von Neurath, taken at Nurnberg, Germany, 12 November 1945, 1015–1210, by Major John J. Monigan, Jr., CAC. Also present: George Sakheim, Interpreter; Anne Daniels, Reporter.

Germany's Reasons for Leaving Disarmament Conference and League of Nations

Q. [In English] How was the decision made by the German Government to leave the disarmament conference in 1933?

A. [Principally in English] Why it was done?

Q. Yes.

A. In the summer of 1933, there were discussions all the time in the disarmament conference in Geneva about the amount of the army, and especially with the French Government.

You know that by the League of Nations—I don't know quite how to express it—it was asserted that the German Government had disarmed totally. Now the question was—according to one clause of the Versailles Treaty—that the other nations signatories to the Treaty should disarm too.

In 1933, during the whole summer, there was a discussion in the disarmament conference about the number of contingents in the prospective armies, but it was impossible to come to an agreement. That was the reason why we left the disarmament conference.

Q. You mean you felt that the talks which occurred in the summer of 1933 were not progressing to the conclusion that the other nations, as well as Germany, would disarm, so you therefore left the conference?

A. Yes. I mean, because we expected to come to an agreement, but it was impossible because France refused to disarm to the satisfaction—

Q. You mean as to the number of troops?

A. Yes, troops. I was myself, I think in September of 1933—I had been in Geneva personally to try to see whether we couldn't come to an agreement. I discussed it especially with the United States representative, who was Mr. Davis, I think.

Q. And had it not already been decided in 1933 to establish a program of rearmament for political and economic reasons in Germany?

A. No. In 1933?

Q. Yes.

(The question was given in German by the Interpreter).

A. No. As I say, we always tried to come to an agreement. In this case Hitler had not decided as yet to re-arm. We only wished to come to an agreement with the powers about the number of troops, etc.

Q. But hadn't it been determined to expand the Wehrmacht for political and economic reasons at that time, in 1933?

A. Please?

(The question was translated into German.)

No, not yet. We had 100,000 men at that time, and it was not yet agreed. I remember once that Hitler proposed that he would even be prepared to abolish the Army totally and only have police troops if the others would do so also.

Q. By whom was the decision made to leave the disarmament conference?

A. I don't understand.

(The question was translated into German.)

It was Hitler who decided it, but it was after I returned from Geneva in September—the end of September. I pointed out to him how things were going, and that no agreement could be reached there. Then he decided to leave the conference. He said it was of no use to talk in Geneva any more.

Q. What was the reason for Germany leaving the League of Nations?

A. Well, about the same. I can't remember what the discussion was at the time in Geneva.

Q. That was 19 October 1933?

A. Yes, but the reasons were the same, that we couldn't go on in the League of Nations. It was not a League of Nations at all any more, because the United States was not there, Russia was not there, and Japan had left. There was no League of Nations any more.

That was the special reason why we left; it was not the League of Nations which was originally planned.

Q. And that was the reason why it was decided to leave?

A. Yes.

Q. The decision to leave the League had no relation to the disarmament problem?

A. The disarmament conference was a part of the League of Nations, you know, so it was interconnected with it.

Q. Of course, the decision to leave the disarmament conference would not necessarily have required a decision to leave the League of Nations as well, would it?

A. Well, as I say, the real reason was that in the League of Nations the three big nations were no longer there, and we were alone with the rest.

Nazi Agitation in Austria

Q. Do you recall, on the 17th of January 1934, that Dollfuss addressed a note to Germany complaining about the activity?*

A. Oh yes. He did it several times and it was with reason.

Q. Now this activity must have been, as you said, a source of considerable annoyance to you as Foreign Minister?

A. No. I mean, it was absolutely a Party affair, and it always made great difficulties for me.

Q. What did you do to attempt to alleviate the condition?

A. To stop it?

Q. Yes.

A. The only thing I could do was to complain to Hitler. They didn't follow him at that time, especially Habicht; he didn't follow his orders any more. So far as I remember, there was a clique of Austrian Nazis who collaborated with Habicht. That was a very strong clique; they were extremists. They endeavored, first to make Austria a Nazi state, to give it a Nazi Government, and then to have the Anschluss. However, I am not sure whether they intended to have the Anschluss as it followed in the end. I mean, I am not sure, because I had no relation with those matters.

Q. What, in your opinion, was the position of the German Nazi Party people with regard to the agitation and the ultimate assassination of Dollfuss?

A. I think they had nothing to do with the assassination. Maybe Mr. Habicht knew something, but I don't think the Party had anything to do with the murder of Dollfuss.

Q. It would be desirable, from the Party standpoint, to have had Dollfuss removed, would it not?

A. Disappear? No; Dollfuss was not an extremist, he was always for collaboration with Germany. Those extremists who murdered him were terrorists and not politicians.

Q. But the Party, in the Austrian activity, in your opinion, exceeded the intentions of Hitler?

A. Oh yes, certainly.

Q. Their agitation was done too soon?

A. Yes. In Vienna, at least at that time—but also later on—there were absolutely terroristic cliques of Nazis. They were, according to my opinion, Communists.

The German Part in the Spanish Civil War

Q. What was the part played by the German Government at the beginning of the Spanish civil war?

A. At the beginning?

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. Yes.

A. Well, in the beginning we had nothing to do with it, only afterwards. There were volunteers going down there, and we were assisting, but I don't know whether we did assist—yes, we did assist Franco with arms, but that was only after the civil war broke out.

Q. Do you recall the visit of the Franco general, Sanjurjo?

A. No, I hadn't seen him.

Q. He came to Berlin in March of 1936.

A. No, I didn't see him. I don't think he came officially. That is why I didn't see him. He had, perhaps, seen Hitler, but I had not seen him.

Q. You know the name?

A. Yes, I know the name.

Q. Were you aware at all of the purpose of his visit?

A. Of what?

Q. Of the purpose of his visit.

A. No. Was that in 1936?

Q. Yes. Do you know what Hitler's views were towards the Spanish civil war?

A. His views?

Q. Yes.

A. Yes. It was in his mind to support Franco against a revolution, or the Reds, as we called them. That was the general view.

Q. Was that based on ideological ideas, or was it on a political basis?

A. No, political basis—would you repeat that?

(The question was translated into German.)

Yes, ideologically, naturally, because Spain was far away from us and politically we had nothing to do with it. It was ideologically, of course.

Q. What, in your opinion, was Hitler's view concerning the usefulness of the Spanish civil war in connection with the position of France to Germany?

A. It may have been in his mind that a strong Franco would, in case of a conflict with France, be helpful to us. I mean, that may be. The first intention or reason why he supported Franco was an ideological one, the campaign against Bolshevism. That was the reason.

Q. And it is quite possible that there would be some incidental benefits to Germany politically if Franco was victorious?

A. You may consider that that was so. I mean, in the event of a conflict with France, a strong Franco could have been of help, at least morally.

Q. Yes.

A. But those considerations were in the bureaus, or in the chancelleries.

Q. I see. Do you recall the occasion of the naval bombardment of Almeria?

A. Yes, I remember a bombardment of Almeria.

Q. —German warships?

A. I remember the bombardment, but I can't remember, at the moment, the reasons. Can you help me out?

Q. Apparently it resulted from some activity by Red aircraft on the ships, and in retaliation they bombarded the town.

A. Oh yes. I think that was the Navy cruiser Leipzig, which was bombarded by an airship or by an airplane, or something of that sort. I couldn't say for sure whether it was afterwards or not. I remember that fact, but I can't remember this.

Q. Was there any discussion about the event?

A. No, it was—I remember the bombardment of that cruiser, the German cruiser, by a Red airplane; there were several dead and wounded on it. I must say "probably," because I can't remember it. However, as a consequence, or as a reaction to that bombardment, Almeria was bombarded.

Q. The details, however, you don't recall now?

A. No; all those things are not in my memory right now. Perhaps you had better ask one of our naval men about that; I can't tell you.

Purpose of German-Austrian Agreement of 11 July 1936

Q. What was the purpose of the German-Austrian accord of 11 July 1936?*

A. That agreement?

Q. Yes.

A. 1936? At that time there was already a strong Nazi movement in Austria, and that movement had more or less excited Mussolini. To show that it was not the intention to occupy Austria, or to make the Anschluss, an agreement between Austria and us was again signed, which stipulated the acknowledgment of an Austria and of no intervention in Austrian affairs. That was the intention.

You see, Mussolini had threatened to occupy the whole south of Austria in case of the Anschluss, and from the Czech side it was said that they would occupy the north to Linz, so from our side we could only conclude again, or acknowledge again, that the Austrian State had an independent sovereignty. That was the reason for that, as far as I remember, and it was concluded when the Austrian Minister of Foreign affairs came to Berlin.

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* See Document TC-22, Vol. VIII, p. 369.

Q. That was the one in which both parties, Germany and Austria, undertook not to intervene in the internal affairs of either country?

A. Yes, that was because the Nazi Party in Germany had made certain propaganda—I mean, to show that it was not so efficient a policy.

Q. And its purpose was to reassure Italy and the other powers that there was no intention to accomplish the Anschluss with Austria?

A. Yes; at that time it was not the intention. As I said, I think the description in the Indictment is quite wrong; the real Anschluss question came up only in December 1937, and not before. Hitler himself had not the intention to make the Anschluss as it was made afterwards. He favored, naturally, a Nazi Government in Austria, not the Anschluss or the disappearance of Austria. That came only in 1937.

Q. What, in your opinion, was the cause of Hitler's changing his views regarding the Anschluss?

A. In 1937?

Q. Yes.

A. In 1937 there were two or three reasons, I think. First of all, as I said, there was an enormous growing of the Nazi movement in Austria. There were at that time three-quarters of the population who were for the Anschluss. That was the first reason.

We, had, then, thousands and thousands of Austrians, especially in South Germany, who were immigrants, and they, naturally, always agitated and insisted with Hitler to free Austria from the Schuschnigg regime. That was the second reason.

The third was that we had no news from England, that the British Government did not any more mean that they were against the Anschluss. That was in December of 1937. So that was the last job for Hitler to decide.

Also in December of 1937, after what I just now told you happened, he asked me whether I thought he should make the Anschluss. I said, "No, don't; or at least speak first with Schuschnigg." The interview which took place in February was a consequence of all those things which took place and I described just now.

However, before, the question of the Anschluss was not at all acute.

XV. HANS FRITZSCHE

*Excerpts from Testimony of Hans Fritzsche, taken at Nurnberg, Germany, 3 November 1945, 1430-1530, by Major General Alexandrov, USSR, assisted by members of USSR prosecution staff. Also present: Colonel John H. Amen, OUSCC; Captain Mark Priceman, Interpreter; C. J. Gallagher, Court Reporter.**

Views on German Aggression and Hitler's Guilt

Q. Were you a member of the Nazi Party?

A. Yes.

Q. From which date on?

A. Since the 1st of May 1933.

Q. Are you familiar with Hitler's book, Mein Kampf?

A. Yes.

Q. As a member of the Nazi Party did you share Hitler's views as stated in his book?

A. Generally, yes.

Q. Do you admit that Hitler in his book stated clearly his aggressive plans against the West, and the East, and especially against the Soviet Union, Poland, Czechoslovakia, and Jugoslavia?

A. This is not how I interpreted the book, but as I said, it is now 15 or 16 years since I read it.

Q. Do you remember the passages which deal with the necessity for "Lebensraum" and with the necessity for Germany to have access to natural resources?

A. No, I don't remember that any more. The book was not of that much consequence in my political work.

Q. How did the Party deal with these problems of "Lebensraum" and of natural resources, independently from the book Mein Kampf?

A. It seems to me that during the years from 1933 to '39, the general policy of the Party, and of the Government, was to make the best of what could be done inside the narrow borders of Germany, and to reach this goal through an extensive exploitation of all our resources.

Q. Is it not known to you that it was intended, and propagated in statements, speeches, and so forth by Hitler himself, that this problem was to be solved through expansion?

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*This interrogation was conducted in Russian. The questions were translated into German, and the answers into Russian by a member of the USSR delegation. Simultaneously questions and answers were translated into English for information purposes only.

A. Do you mean by conquest?

Q. Yes.

A. It became clear to me subsequently.

Q. When did you realize this?

A. During the first part of the war, I felt that the war had not been provoked deliberately by Hitler, but as for the war against Russia, I felt that Hitler had wanted, and had caused it. In 1942, one year after the start of the war against Russia, I became acquainted with the imperialistic aims of the regime to their full extent. In 1941, at the start of that war, I could not believe that Hitler had started it intentionally, because it would have seemed to me like madness to start a new war in the East, having on one's hands an unfinished war in the West. I had Hitler's assurance, and also Ribbentrop's assurance, that the war had been declared on Russia only to beat the Russians to it, who were about to declare war on Germany. Then shortly after the start of the war in 1941, I saw to what extent the occupation of the Eastern territory had been prepared. Finally, in 1942 I realized the full extent of Hitler's imperialistic intentions in the East.

Q. I have a question. In other words, this information which you had received previously from Ribbentrop was not accurate?

A. No, I found out about it only now, as a prisoner. In a prison cell in Moscow I met General Niedermayer, who had been acquainted with an interpreter who had done the interpreting during the conference between Molotov and Ribbentrop at Moscow, as well as at Berlin.

Q. I want to clarify something. In the beginning you started to say that you had received information from Ribbentrop. Now you are saying that you received that information from Niedermayer, as information which he had received from some interpreter, is that so?

A. All the information that I had about the Russian war I had received from Ribbentrop during the night from the 21st to the 22d June 1941. I am referring now to the information which I had up to three-fourths of a year ago.

Q. You said that you realized in 1942 what the imperialistic aims of Germany in regard to Russia were?

A. Yes.

Q. This is why I am asking you whether the information which you had received from Ribbentrop concerning this question was incorrect?

A. I became suspicious about it as early as 1942, but even in

1942 it was still difficult for me to realize what the true situation was. I still could not think that Hitler had deliberately launched this war.

Q. I still want an answer from you. You said that you realized it in 1942. I am asking you now whether what you realized in 1942 checked with the information which had been given to you by Ribbentrop in 1941?

A. There was no real contradiction, because Ribbentrop had informed me only about the fact that the war had started. He did not tell me then about the final intentions.

Q. How did you happen to realize in 1942 that Germany had imperialistic aims in this war?

A. I believe that I received conclusive proof of this being so from Niedermayer when I was in prison.

Q. I am talking about 1942?

A. In 1942 I myself was a soldier, and I was visiting the Eastern areas, and then I saw that extensive preparations for the occupation and administration of the territories, extending as far as the Crimea, had been made, and I came to the conclusion that all of this had been planned long before the war broke out.

Q. This was your personal observation?

A. Yes.

Q. And what do you know about this question from official sources? After all, you were an important official in the Ministry for Propaganda?

A. Properly speaking, nothing. There had been very little official publicity on this question. There had been very little official publicity. There had been a certain amount of talk in the press in 1942 of the wealth in natural resources in the East in order to get people interested.

Q. Do you admit after these conclusions of yours in 1942, that the attack against the Soviet Union in 1941 was the result of preconceived plans, and reflected official views on how to solve problems of labor shortage, and how to increase Germany's wealth in natural resources?

A. Yes, I have come to this conclusion.

Q. Are you then of the opinion that these general ideas about the necessity for "Lebensraum" are the main cause of Germany's preparing and starting the war against the Soviet Union, and in general for Germany's starting the World War?

A. No. This is my conclusion, but I don't have enough documentation to substantiate my views. I would say—

Q. Go ahead.

A. Hitler's guilt is to have prepared this war, to have carried on very extensive preparations, and at the same time to have made the German people believe that his intentions were peaceful. In the end, when the war was imminent, I think that his guilt was just as great as that of the Western Powers. Both he and the Western Powers could have prevented that war from happening. This is how I see things today.

Excerpts from Testimony of Hans Fritzsche, taken at Nurnberg, Germany, 16 November 1945, 1000-1245, by Col. Likhachov, USSR. Also present: Col. John H. Amen; Capt. Mark Priceman, Interpreter; Mr. James P. Buck, Court Reporter.

Fritzsche's Part in the Werewolf Movement

Q. Do you personally affirm that you had no part in the organizing of this movement—the Werewolves?*

A. On the contrary, I worked against the organization of this movement.

Q. In other words you confirm the contents of your written statement about this subject?**

A. I have read the transcript you are referring to only once in its entirely and later on I was given a chance to see parts of it. As I recall it the transcript says about this subject the following: It says that I am supposed to have broadcast over the radio proclamations in favor of the Werewolf movement. As you gentlemen should recall, I did say that such appeals to organize this movement were broadcast over the radio between Sunday, the 1st of April 1945 and Tuesday, the 3rd of April 1945. I did, however, call your attention to the fact that these appeals were transmitted to the broadcasting stations directly by Dr. Goebbels during my absence. And I didn't have a chance to talk to Dr. Goebbels until that Tuesday when I succeeded in getting the broadcast of these appeals discontinued. May I say one more sentence? I also stated that I would of course assume the responsibility for whatever had been broadcast over the radio during my absence, by my subordinates.

Q. But then I cannot understand why you claim you had nothing to do with the organizing of the Werewolf movement.

A. I beg your pardon. When did I say I had nothing to do with the organizing of the movement? I have just stated I actively opposed the organizing of the movement. As a matter of fact several months before the end of the war I was told to set aside a number of radio stations that were to be used for this movement. I also told you at Moscow that I purposely delayed the execution of this order. And I also stated then (and I am stating it now) that suddenly during my absence I had to face the fact that this broadcasting had been done by my subordinates. Furthermore I told you about the dramatic conversation I had with Goebbels on Tuesday, the 3rd of April about the subject. I leave it up to you to draw your own conclusions from that.

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*The Werewolves were a movement which the Nazis attempted to organize shortly before Germany's surrender, to resist and sabotage the impending Allied occupation.

**This refers to a statement purporting to summarize Fritzsche's interrogations in Moscow, where he was interned after capture by the Russians, before transfer to Nurnberg prison. The document was drawn up by the interrogators and signed by Fritzsche. On interrogation by the American prosecution in Nurnberg Fritzsche repudiated this document as inaccurate in certain respects, and himself prepared a revised statement (see document 3469–PS, vol. VI, p. 174). The Soviet summary is not published in these volumes.

Q. We are talking not only about your participation in any broadcasts that were made. We are talking about your personal participation inasmuch as you, yourself, made statements over the radio that the movement should be organized.

A. I never made any such broadcasts myself, but they were given to the radio by Dr. Goebbels during my absence.

Q. However, it is well known that you yourself made such appeals over the radio. Why do you not admit it?

A. As far as I know I never talked over the radio in that sense.

Q. If that is so we will have to refer to some of the speeches you made over the radio. Do you remember your speech over the radio on the 7th of April 1945?*

A. I don't remember the details of it.

Q. I will make an effort then to revive your memory. You stated over the radio, "May nobody be surprised if here and there civilians may oppose and fight enemy troops in occupied territories and even after the occupation has become a permanent fact it is to be expected that the occupation forces will meet with underground resistance. Such resistance is being organized now under the name of Werewolves." What do you have to say to this?

A. I don't remember having made these statements. If you want me to make a final statement on this question I will have to know the background of this speech and be familiar with the considerations which preceded this statement. Right now I can only say this. If I had spoken such words they would not have been in support of the Werewolf movement.

Q. I am quoting your own words. You must have spoken them and since this happened only recently you must remember them.

A. I have made approximately a thousand radio speeches and I couldn't possibly remember every sentence I spoke. But I repeat that even if I did say these things it didn't mean that I was urging people to support what you are trying to say.

Q. How else can one interpret this?

A. This is not an appeal. It is only a defense. It is a defense which makes reference to some previous very important statement. It starts with the words: "Nobody should be surprised, therefore***"

Q. Your explanation is not convincing.

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

XVI. ROBERT LEY

Testimony of Robert Ley, taken in Nurnberg, Germany, 1440-1610, 6 October 1945 by Major John J. Monigan, Jr. Also present: Pfc. George W. Garand, Interpreter; Tec./4 R. R. Kerry, Reporter.

How the Nazis Took Over the Labor Unions

Q. This afternoon we will direct our attention initially to the period of April 1933. Do you recall then the meeting which took place at Munich in April of 1933 regarding the question of taking over the property of the trade unions?

A. Yes.

Q. Do you remember the circumstances under which that meeting was called?

A. Yes.

Q. Who in addition to yourself addressed the meeting on that occasion, if you recall?

A. It was not a conference. I was just reporting to Hitler regarding the circumstances of some unrest that was taking place among the working factions, and I made other suggestions to him. We had the NSBO [National Socialist Factory Cells Organization] under a certain Schuhmann. It was founded—I don't exactly remember the date—I think it was 1930 in Berlin. It was an institution to help the Party gain footing in the factories. Now, the Party had come to power on the 29th of January 1933, and in March there were to be elections, and preparations were being made very eagerly. Clashes occurred between the NSBO and the trade unions, and this conflict threatened to grow worse. The labor unions had planned to use force on the 1st of May, but whether this was true or not, I cannot possibly know. This man Schuhmann himself told me about that. That was in the middle of March. I took these reports to Hitler and stated the case. Hitler told me then he had the intention of taking over the unions and dissolving them. He then asked me if I had any ideas as to who should take over these trade unions. I suggested Schuhmann. Hitler, however, didn't want Schuhmann, and postponed the matter for 14 days, and said that I should keep on watching these happenings, and as soon as danger threatened to report to him.

In early April—I can't remember the day—I went to him again. I told him time was getting shorter and that the matter was becoming more and more pressing. I also gave him details of some instances where clashes had already taken place between the NSBO and the trade unions. He asked me again whom I had to suggest, and I again suggested Schuhmann. "No," he said, "we don't want that again," and he was going to think it over and call me again.

On the 14th or 15th of April—I still can't remember the exact date—he called on me again. He asked me if I had the right man now. Hess was there at the last conversation, and he suggested Bormann, but Hitler then said, "No, I don't want him. You be it, Ley." I said, "Yes, good." And then he said he would give me the exact time and he would give me three days' advance notice. Two days before the 1st of May, he sent for me again. He told me the day, that after the 1st of May, after the May parade had taken place, that I should take over the unions. Then on the 2d of May, we took over the unions without any resistance. I myself took over the headquarters of the free trade unions in Berlin, and the head of the union was sitting there as if he had been waiting. The whole thing took place within four days. It was on a Monday. All the heads of the unions as well as the heads of the employers came voluntarily. Altogether there were 216 different unions, and they came to the Preussische Herrenhaus* where they signed papers to the effect that all their property and funds were to go over to the new organization. There were many unions that reported there whose existence I didn't even know of. On Friday, four days later, I could report to the Fuehrer that the taking over of the unions had taken place, and the German Labor Front was established. In a meeting over the radio, the establishment of that organization was announced after the Fuehrer had authorized beforehand that this meeting take place.

Q. The report which you made to the Fuehrer four days after the taking over of the property was to the effect that the mission had been accomplished and that the DAF [German Labor Front] was formed; was that what you said?

A. I suggested that this organization be founded, and the Fuehrer made me chief of that organization.

Q. Were the people, who were mentioned within the terms of this circular letter as being subjects for protective custody, actually put into such protective custody?**

A. They were not to be taken into protective custody. Exceptions are only granted with the permission of the Gauleiter.

Q. Those were the local chairmen though?

A. I have already said it has actually been like that—not to be taken into custody.

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*Formerly the Upper House in the Prussian legislature.

**See documents 392–PS, vol. III, p. 380; 2336–PS, vol. IV, p. 1052.

Q. But at the bottom of the first page, there is a directive regarding the taking into protective custody of certain people.

A. But after a few days they were let go again.

Q. Were the actions taken in accordance with this circular letter reported to you by each gauleiter, or how were reports rendered on completion of the action?

A. I can't remember that any more exactly now.

Q. What was the purpose of putting these people into protective custody?

A. To avoid civil war, and to keep them from withdrawing money or property.

Q. In order that the record may be clear, the persons referred to in the paragraph at the bottom of page 1, which begins, "In Schutzhaft werden genommen," were taken into custody, is that so?

A. That I don't know. I didn't take anybody into protective custody. Those who didn't resist were released at once.

Q. But the order directed that those people be taken into protective custody, didn't it?

A. They could be taken if they resisted or if they moved money or property or if they tried to stir up the workers or if there was any danger.

Q. The terms of the order was that they will be taken, is that right?

A. Certainly, if they resisted.

Q. Now, on page 2, the paragraph beginning, "Die Ortsausschussvorsitzenden," says that they are not to be taken into protective custody, does it not?

A. On the first page only a few organizations and the heads are being considered, the leading personalities, to prevent them from giving counter orders, and those who voluntarily surrendered their organizations and signed the paper at once went home. It was only a precautionary measure.

Q. If on the other hand, it was necessary either because they resisted or because they would not comply with signing the required paper to turn over the property, they were retained in custody?

A. They would have been taken into custody, but there was nothing else to be done.

Q. Is it not actually a fair statement that the effect of this circular letter, the general design of it, was to take over the property and to eliminate the trade unions and to substitute for it a new system? That anything which was necessary to accomplish that end was taken under the action directed, is that so?

A. The first is not right. The property was of no importance to us because I had no knowledge of what the property was, and I have never been worried about that. I had no idea what property was owned by the unions. The actual property was nil when we started out. Everything was rotten. Nobody was paying any dues. The labor unions would have had to live from public funds. The head of the Free Labor Unions in Berlin told me—he sat in a chair when I came in. When I told him, "I am taking over this," I asked him to help me, and then he told me, "I am glad that you have come and we can finally have order." Such were conditions.

The second of course is right. Our whole taking over of power was a fundamental revolution, certainly. We had come to power and everybody knew that. Also Hindenburg, who gave us that legal power, knew that. That had been told to him. One has to consider that Hitler was called legally by Hindenburg. This action had taken place under Hindenburg. It couldn't have been done more legally. I would like to defend myself against the thought that I had done this out of a lust for power or a desire for robbery.

Q. Do you recall who it was from the trade union with whom you discussed the matter in Berlin?

A. Everything was done very fast. Within 15 minutes, everything was done. The whole thing for me in Berlin didn't last more than one-half hour. Everything went very fast. I did not arrest anybody, but put in my people and went away, and the other organizations, 216 of them, all come voluntarily to my office. There came men whom I didn't even know, who told me they had an organization of sometimes only 4,000 members. I had a paper which is probably also with you, a document with four or five lines saying, "I turn over all rights and privileges of my organization to the German Labor Front and forfeit all rights and privileges," which they signed, and it was finished.

Q. That was to be executed by the union people?

A. That has been signed. Whoever signed that could go home.

Q. That was the general form that was prepared for their signatures?

A. Certainly.

Q. The particular section that we were interested in was Section 2 in this Reichsgesetzblatt, page 285, dated 19 May 1933.*

A. That is the fundamental law that was given out immediately after the taking over of the labor unions. I myself have worked on that. Now, as to what the fundamentals of the whole structure were, I have already stated this morning. I have already said this morning and in the other interrogations that as the Party represents the interests of the people towards the state, those of the individual towards the group; so the German Labor Front represented the employers and the employees, because its whole influence depended on the trust the people put into it. And now therefore it could certainly not make laws and decrees because with that the notary would become the judge or the lawmaker. Therefore the German labor unions by order of the Party had to set up the fundamentals after which the laws were made, and watched out to see that these laws were carried out. Above all, they had to insure working peace within the factories. On the contrary, the interests of the individual to the unions had to be fitted according to the interests of the community. The class distinction could not be allowed to come up again. I have seen little details from the factories negotiated on the main platform of the Reichstag. Just to give an example, a foreman gave an apprentice a slap in the face in the factory. For this one smack alone, three Reichstag meetings were held. After a while it was not the smack on the face or the head; it was just the parties standing against each other. So it was clear to me and to all of us that this whole factory dirt which came out of the living together of the people should be negotiated there with those people whom it concerned.

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*See document 405-PS, vol. III, p. 387.

Now, I come to speak of this law. To have completely the trust of the employer and the employee, first of all the Labor Front had to be independent from the state as well as from classes, the workers and the employers. We were in a certain way the negotiator between the workers and factory owners. But there were many occasions when people were not satisfied without negotiations. Then there had to be instructions from the state which had to be complied with. This was first the trustee, and the other, the labor court. The trustee was in a certain way the social judge. We represented the Party before the trustee as well as the labor court. As the interests of the employers were different from the interests of the employees, we had two chambers in the Labor Front, one for employers and one for employees. Now, if this conflict came before the state, then we said if there was an employer to be represented, a representative of the chamber of employers came, or if a worker was to be represented, a representative of the employees came. The whole thing was under the office of the Rechtsberatungsstelle. It was understood that this advice was free of charge. So they were working together to solve the whole social difficulty, the German Labor Front, trustee, and Labor Office, Labor Front, the union of all those that were working, the employers as well as the employees, trustee, social judge, and labor office as a representative of the law-giving agencies. This was only that section of the workers' agreement with which the trustee was concerned. We still had the viewpoint of the trade unions, which were only concerned with labor agreements. Rebuilding the social structure, this became only a part of the task which had to be done there.

Q. Then later in 1934, in January, you had a larger concept of the task of the DAF, is that right, when the law of 20 January was passed?*

A. Can I tell you? I had known nothing about these unions. I had never before bothered about them as I myself was only an employee in a factory. Then I saw that he was right in practice and that it was wrong. Under that I became a National Socialist. But since I had not occupied myself with this subject, I did not suggest myself to the Fuehrer. Therefore I was surprised when he named me. I told him that too. I told him, "My Fuehrer, with this subject I have never occupied myself." But he said, "You are the right man." Later on when we christened the first ship during a special ceremony, "Strength through Joy," then he said, "Workers, I have given you as leader the greatest idealist." That was the only thing I brought with me for that task. Everything else came afterwards. More I can't tell you. Out of healthy common sense, out of practice, out of my thinking, out of that it has developed. In any case, from our enemies, that has been told me by Sir Patrick, the Secretary of the Foreign Office, in Mondorf. I think his name is Patrick. He told me word by word, "I myself have coal interests in Germany, and I must tell you that the German Labor Front has been one of the most praiseworthy organizations in Germany which I have ever known." In any case, its success proves it, no strikes, no sabotage, in all, achievements.

You have interrogated me about foreign workers. Unfortunately, I did not remember at that time. Their labor achievements rose exactly as high as that of the German workers; while the achievements of the Eastern workers when they arrived were not over 60 percent on the average, among them were those who only did 20 percent and others who did at least 80 percent and many 100 percent. The foreign workers took up the battle for achievement.

One more thing. While the labor unions in the first world war after one-half year did not have any more dues coming in and were being aided by public funds, we still had in April of this year 90 percent of the contributions, of the dues. There were 55,000,000 per month.

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*See document 1861–PS, vol. IV, p. 497.

Q. Now, under whose direction were the trustees? Did they fall within the framework of the DAF or were they under the Minister of Labor?

A. Under the Minister of Labor. At the end under Sauckel. I like to talk about these things. I am not bored. I am glad when I have the opportunity to talk about it because one will be able to feel that at the end of my work, I am still very proud of it. I believe that my system has been the most ideal. It is a great pity that it has not been carried over to other countries.

Excerpts of Testimony of Robert Ley, taken at Nurnberg, Germany, 1640-1655, 18 October 1945, by Major John J. Monigan, Jr. Also present: 2d Lt. Werner H. Von Rosen-Stiehl, Interpreter; T/4 James P. Buck, Reporter.

Ley's Statements After Reading the Indictment

Q. You have now been served with a copy of the indictment in this case in which you are accused as defendant of the commission of various crimes. It is expected that you will continue to be interrogated from time to time unless you expressly object thereto. Please state whether you have any objection to being further interrogated, or whether you consider your interests would be protected by refusing to be interrogated further.

A. I am willing to answer any questions. I have nothing to hide. This is all so terrible. I have read this indictment. Of course under it falls every member of the Party. For instance, with regard to me it has been said that I had been responsible for offenses and crimes connected with count number three. I have nothing to do with them at all. I was not in charge. It will be necessary to show me those things as well as where I have been participating in the preparation for the war. That I participated in getting the war started—I had prepared the Party Congress in Nurnberg in 1938. I even had arranged for an excursion for workers to the Far East and around the world for that and the following year. I have had no knowledge or information as to the war. It came to me as a surprise, as a hail storm comes to a corn field. Of course, that I was a member of the Party I have stated here before. And that I should have mistreated foreign workers, it is not true. As a matter of fact I have favored them. I have done everything that was within my power—everything to improve their lot.

Q. You understand you will have an opportunity to present such a defense as you may. At the present time we do not wish to have a discussion of the merits of the charge.

A. I do not know an attorney. I have referred to three names on the list of attorneys but I don't know these gentlemen, but if it is at all possible, I would like to have a Jewish person as my defense counsel. I do not know whether the Major has read my writings. I am willing to die. I haven't written these things to protect my life. I did it because I believed I would serve humanity. And I don't know these gentlemen (referring to the list of lawyers). Who would be able to give me references with regard to these men? Is there anybody who could advise me on this matter?

Q. The procedure for the selection of counsel is not known to me at the present time. However, there will be a decision on it one way or the other. What specifically have you in mind regarding that?

A. I would like to state again that I would like to be represented by a respectable Jewish attorney, and if I could have two, I would like to have an attorney from Cologne. His name is Robert Servatius. He certainly is not a Jew, but two, Falkenberg and Pollack, I would presume they are Jewish.

Q. The procedure on obtaining counsel will be decided later, and you will be able to forward your request for a Jewish counsel if that is what you wish. That will be all.

XVII. MAX AMANN*

Excerpts from Testimony of Max Amann, taken at Nurnberg, Germany, 23 October 1945, 1030-1225, by Lt. Col. T. S. Hinkel, IGD. Also present: John Albert, Interpreter; Frances Karr, Reporter.

Nazi Acquisition and Suppression of the German Press

Q. Do you recall publicly stating in October 1941 that the majority of the larger and medium-sized papers in Germany were financially controlled by the Party?

A. Yes, I think even a two-thirds majority.

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*Max Amann was Reich Leader for the Press; Head of Central Publishing House of the Party; and President of the Reich Press Chamber. Previously he served in the same company with Hitler in World War I, took part in the Putsch of 1923, and was imprisoned for four and one-half months. He was Munich City Councillor 1924-33; member of Reich Culture Senate since its foundation in 1935; and member of the Reichstag since 1933. See document 3016–PS, vol. V, p. 735; see also vol. I, pp. 330–332.

Q. Well, what was the total circulation, at its highest point, of all Party newspapers?

A. If the total circulation amounted to 21,000,000 and I said two-thirds of it is controlled by the Party it would amount to 14 million.

Q. Was the highest peak of circulation of German newspapers, including both Party and non-Party, the 21 million figure, you have cited?

A. Yes, of all German dailies. You have to add a great many weeklies, which had very wide circulation.

Q. Now, isn't it a fact that a large number of private publishing houses that were non-Party went out of existence during the eight-year period from January 1933 until 1941?

A. Yes. We bought quite a lot after 1935.

Q. How many newspapers were owned by the Party at the time the Party came into power in January 1933?

A. I can only estimate, but perhaps 400 newspapers.

Q. How many newspapers did the Party own at its highest point?

A. Approximately, but this is only an estimate, from 1,200 to 1,500, but I rather think 1,200.

Q. Is the difference between the 400 and 1,200 or 1,500 figure accounted for by the purchase of going newspapers or by the founding of new newspapers?

A. Through both.

Q. Which would you say accounted for the larger number?

A. In my opinion, purchase.

Q. What were the methods used in acquiring these various newspapers by purchase?

A. On my strict order two points had to be observed strictly. First, the newspaper had to be relinquished voluntarily and a legal price had to be paid.

Q. Why do you think so many newspapers were willing to sell valuable property to your outfit?

A. The reason was that those publishers, who were regarded as politically unreliable by the Party, were told it would be a good idea to hand over the newspapers to their sons, who should have had newspaper training by now, or any other relative, or, if no other person existed in his family who would be qualified, to offer his paper to somebody outside.

Q. Who, besides yourself in Germany, was doing any purchasing of newspaper properties during the period in question?

A. I don't know that but I am sure that newspapers were also sold in the free market to other publishers.

Q. You don't really think that, do you?

A. Yes. I really believe that.

Q. You do not mean to imply by that that you didn't know the publishing picture as a whole in Germany, do you?

A. Oh yes, I was well informed all the time but I could not recall detailed, single cases.

Q. As a matter of fact, if there had been any substantial buying of newspapers by anybody except yourself you would remember it, wouldn't you?

A. Yes, then I would remember it.

Q. The fact that you do not remember it would indicate that there was no such substantial buying, isn't that correct?

A. Yes, that is right.

Q. Don't you think it is a fair statement to make, that you were practically the sole purchaser of newspapers in Germany during this period?

A. Larger papers, yes, that could be said. May I add one thing? The financial situation of the German newspapers was quite bad during that period. Many papers had collapsed already during the inflation and later on through mass unemployment when few people could afford to buy newspapers.

Q. You are speaking of the period from 1933 on now, are you?

A. Only since 1934 and 1935 the publishing business flourished again. I bought, for instance, from Hugenberg the Ala Advertising Company, which operated at a deficit at that time and it took about two years until it made profits again.

Q. You don't take the position, do you, that all the newspapers you purchased were in a bankrupt condition prior to the time you purchased them?

A. No, I don't want to say that. I want to say in general, the situation was pretty difficult.

Q. Why do you think people who owned newspapers that were profitable were willing to sell them to you?

A. That willingness could be explained by the fact that many publishers were declared politically unreliable and couldn't continue as publishers.

Q. Did you ever make any recommendations as to which publishers should be declared politically unreliable in order that their newspapers might then become available for purchase?

A. No. The Reich Association of the German Press had to investigate the political reliability of people and they used the assistance of the Propaganda Ministry and the criminal and political records of people were investigated, etc. I remember, for example, a case in Zwickau, Saxony, where one publisher would have one Communist, one German Nationalist paper, and one so-called Generalanzeiger, which means neutral press, and that was regarded as politically unreliable to bring out three different newspapers.

Q. Weren't your representatives among those who decided as to whether or not a particular newspaper was politically unreliable ?

A. I myself was President of the Reich Association of the German Press until the Reich Press Chamber was founded.

Q. Then you were President of that, is that correct?

A. When I became President of the Reich Press Chamber I retired from the Presidency of the Reich Association of the German Press.

Q. Wasn't the Reich Association of the German Press under the supervision of the Reich Press Chamber?

A. No. If I may explain the difference, the Reich Association of the German Press was a public corporation and represented the interests of the journalists and was not under the Reich Press Chamber.

Q. What interest did the Reich Press Chamber represent?

A. The Reich Press Chamber had the task of representing the interests of the publishers, of the publishing industry, and to build a new Association of the German publishing business.

Q. Isn't it a fact that whenever a newspaper was declared politically undesirable that one or more of your representatives participated in that decision?

A. A certain Mr. Winkler always approached me and told me, "There is another newspaper to be bought." But I didn't want so many newspapers. I was always afraid of the recollection I had of Mr. Stinnes, who built up such a huge concern that he couldn't handle it any more.

Q. This certain Mr. Winkler, to whom you refer, was one of your employees, is that right?

A. No, he was an expert supplied by the Propaganda Ministry.

Q. He worked for you, didn't he?

A. Yes, he then worked for me. There were some confusions at the beginning. He first bought newspapers for the Propaganda Ministry and then I protested and said an official ministry cannot run newspapers, it has to be run by business men and then he bought newspapers for me.

Q. When you say, for you, you mean the Eher Publishing Company?*

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*The publishing house of *Franz Eher Verlag* was given a lucrative monopoly on the publication of all works of Party officials, by virtue of a special decree by Hitler. See document 2383–PS, vol. V, pp. 9, 19.

A. Yes, that is right.

Q. Whatever private misgivings you may have had about developing a large number of newspapers, nevertheless the Eher Publishing Company did buy a large number, isn't that correct?

A. Yes, that is right.

Q. Now, you remember our discussion yesterday regarding the purchase by the Gau, of the "Dortmunder Generalanzeiger"?

A. As far as I can remember it must have taken place in 1933 to 1934 and at that time I had not been in the purchasing business yet.

Q. What do you recall regarding the acquisition of the property rights of the Ullstein Publishing Company?

A. I have a very good recollection of the case of the Ullstein Publishing House because that was the first big publishing house which Winkler tried to buy for the Propaganda Ministry and I protested successfully at that time and said, "Such a big publishing house must be bought by a newspaper expert" and there were long negotiations with the Ullstein Company. I finally talked it over with their Director, Mr. Wiesner, and I had a conversation with Dr. Franz Ullstein, and my proposal was to pay the entire capital stock at the value of 12 million marks but Winkler thought I was crazy. He said it was much too much and much too generous, especially as this publishing house had a deficit of 3.7 million marks the previous year. My opinion was that his publishing house should not be continued at all. It should have been liquidated, as was done with most publishing houses. But then, I felt the only reason for the bad state of the Ullstein business was that it didn't have enough printing orders and, as I could supply that to a large measure, I decided to buy it.

Q. Wasn't that newspaper purchased through the auspices of the Deutsche Bank?

A. No.

Q. Who paid the 12 million marks for it?

A. There was quite some friction with Winkler about the purchase. Winkler said he had the money from a so-called "Caucio Fund," which represented money given by the Reich Government to the Propaganda Ministry but I protested against this procedure. I finally borrowed money from the Bank der Deutschen Arbeit and refused to take Reich money for it, or to use Reich money for it.

I only want to add that finally, on this occasion, it was cleared up that Winkler was not buying newspapers for the Propaganda Ministry but for the Eher Publishing House. The negotiations, which lasted for many weeks, could be finished within a few days, the moment I offered the complete capital as the purchasing price.

Q. As a matter of fact that 12 million mark purchase price was quite a bargain, wasn't it?

A. In the beginning it looked like a very bad bargain to me, and Winkler, as I said before, warned me against paying so much, but I knew the only problem was to get enough orders to keep the machines going and so I did it.

Q. Actually it was worth about 60 million marks, isn't that true?

A. No, that is impossible. Every layman could find that out because the purchase price was based on the last year's balance sheet and that could be ascertained easily. The last balance sheet for Ullstein for 1933 showed a deficit of 3.7 million marks.

Q. Did you take a look at any of the balance sheets other than for the year preceding?

A. No, I couldn't remember because as a basis for the purchase price only the last year was taken.

Q. Yes. It might very well be that the balance sheet for the year 1933 may have looked bad because the newspapers in the Ullstein chain had been prohibited from publishing for a long period of time. Is that right?

A. I cannot remember that Ullstein papers were prohibited from appearing. The main business was the "Berliner Illustrierte," which was still appearing. The "Gruene Post" had a big business. The "Koralle," a weekly, had had an excellent sale. This weekly, for instance, had a circulation of 80,000 which was regarded high, but the moment we took it over we increased it sharply.*

Q. Would it surprise you if I told you that these papers, to which you have referred, were shut down for periods of weeks at a time because they had printed something that the Propaganda Ministry or somebody else disagreed with politically?

A. I can only remember the "Gruene Post" was forbidden for a short period.

Q. Yes. Now, isn't it a fact that the Ullstein interests were Jewish?

A. Yes, that is right.

Q. Do you think that had anything to do with their sale of their interests?

A. Yes, that had quite a lot to do with it because Hitler had ordered, as a matter of principle, to extinguish and remove forever all former Jewish-controlled newspapers.

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*It was an excellent educational paper and we sold a lot to teachers, and so-forth.

Q. Do you recall my asking you yesterday, if it was not a fact, that one of the principal things that assisted you in your newspaper buying activities were the anti-Semitic laws and decrees that had been issued?

A. Those anti-Semitic laws were no help to me. I did not keep within their frame.

Q. I invite your attention to your purchase of the Ullstein interests.

A. I did this against the direct wish of the Fuehrer, who had declared, "I wish this published house to be liquidated."

Q. Wasn't it liquidated when you purchased it?

A. No, it received new life through my purchase.

Q. You don't seriously contend, do you, that the same editorial policy was followed after your purchase as before your purchase?

A. I have to state again I had no influence whatsoever on the political direction and tendency of the newspapers. May I give you one example, the case of the "Frankfurter Zeitung"? Hitler wanted to have this newspaper destroyed, liquidated. Finally, it was ascertained that it was not in Jewish hands at all but was owned by the I. G. Farben industry. I hesitated for years from buying the "Frankfurter Zeitung" but according to the new laws, a stock company like the I. G. Farben Company could not continue publishing. The paper was in bad financial shape. About 500,000 marks a year had to be given as a sinking fund by I. G. Farben to keep the paper going.

Q. Now, do you recall issuing a decree in 1933,* as President of the Reich Press Chamber, to the effect that organizations could not obligate their members to subscribe to certain newspapers?

A. I remember this decree but it was not in 1933 because there was no Reich Press Chamber at that time.

Q. When was the decree issued?

A. At the earliest, 1935.

Q. Well, was that decree seriously followed with respect to the Party newspapers?

A. The purpose of the decree was to stop the many subscription agents, whose practice it was to get subscribers by any means. I even issued instructions to forbid any subscription campaigns all over the Reich. Every subscription agent had to be authorized by an identification card, signed by me. Every agent was investigated for previous criminal record, political reliability, and so forth and I insisted he got a fixed salary so that financial distress would not force him to use wild methods.

Q. Did you ever license any agents who were not Party members?

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

A. Most of them were non-Party members.

Q. I thought you said they were investigated as to their political reliability.

A. No. Only the publishers would be investigated as to political reliability; the agents as to previous criminal records.

Q. Whatever the ostensible reason for issuing the decree, did it not in fact occur so that the result of it was to prohibit people who belonged to various organizations which had their own publications, from subscribing to those publications as a condition of membership in the organization?

A. The decree had as a purpose the preventing of pressure on simple Party members, who belonged to different Party organizations or affiliated organizations, from being forced to subscribe to every single newspaper published by these organizations. For instance, men who belonged to the SA had to subscribe to the "Gau Zeitung." He had to subscribe to the weekly "SA Mann." His wife had to subscribe to the "Frauenschaftzeitung;" his daughter to the "BDM Zeitung" and in addition, very often people were still reading the neutral non-political papers, as in the past, and did not want to give them up. As nobody can afford five or six newspapers every day, this decree tried to prevent this type of pressure on the Party members.

Q. Is it your statement now, this decree was intended to ease pressure on the Party members?

A. In general, no, this decree was planned to have a general effect. I didn't want any subscriptions which were not voluntary because it could destroy the whole prestige of the Party if we would force everybody constantly to pay for newspapers he didn't want.

Q. I suppose you consider it only an incidental fact that other organizations which were opposed to the Party, such as the Catholic organizations, that the members thereof could not subscribe to their papers, as a condition of belonging to such organizations?

A. At that time there were no Catholic newspapers anymore, only the general press. The Catholic newspapers were discontinued under the order of Hitler. There were about 63 dailies, Catholic dailies, which were discontinued. This decree, furthermore, led to a general Party order that "Gau" newspapers should only be sold and subscribed to in the specific Gau.

Q. When were the 63 Catholic newspapers suppressed?

A. During the year 1935 and from then on.

Q. Now, as a matter of fact, you signed the decree suppressing these newspapers. Isn't that right?

A. I don't remember this exactly but it is possible that it originated with the Reich Press Chamber.

Q. Anything is possible. What do you recall about it?

A. I remember that the Reich Press Chamber required all publishers to sign a declaration which said that as a publisher of a German newspaper he was affirming the National Socialist State and this declaration could not be given by publishers of the Catholic newspapers because they had the point of view, and quite rightly from their position, that they could not affirm certain National Socialist measures, like sterilizations for instance, and so these publishers could not sign required declarations.

Q. Now, isn't it a fact that shortly after the Party came into power, that papers of a political left, that is Communist and Marxist papers, were suppressed immediately?

A. Yes, they were closed down by the police.

Q. Isn't it a further fact that shortly after the Party came into power, that papers of other political parties, that is non-Marxist or non-Communist, but also non-Party, were with some exceptions left undisturbed until suitable legislation had been drafted to deal with them?

A. I assume that is correct but the Marxist papers were suppressed immediately.

Q. Wouldn't it be a fair statement to say that the whole purpose of the Nazi press program was to eliminate all press in opposition to the Party?

A. Yes, that can be said.

Q. Do you recall another decree on the 24th of April 1935, which prohibited the formation of press combines, that is, no publisher was allowed to issue more than one independent newspaper in more than one locality?*

A. That is possible. We talked about it already.

Q. Do you recall issuing that decree?

A. This decree was published, after months of negotiations, by the Propaganda Minister.

Q. Isn't it a fact, as a result of this decree, that many publishers were required to sell one or more of their newspapers?

A. If the decree stated things as I was told yesterday, but I am still not certain whether the decree contained that phrase.

Q. The record will show exactly the phraseology of the decree. There is no question about it. My question is whether or not it did not compel certain publishers to sell to you one or more of their newspapers? I do not mean that the decree required the sale be made to you, but you were the ultimate purchaser.

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*See document 2315-PS, vol. IV, p. 1007.

A. He could sell to anybody as long as this person was politically reliable.

Q. And so, it was just by coincidence you happened to be the purchaser, is that it?

A. Most probably the main reason was that during this revolutionary and confused period, very few had the courage to start a newspaper venture without having previous experience.

Q. We have already discussed the decree of 24 April 1935, with reference to the "scandal press." Now, isn't it a fact that this decree was used or could be used against any newspaper that was not covered by the other two decrees that we have discussed?

A. That decree against scandal sheets was a very clear matter. The person in question either must have had a criminal record or there must have been an investigation already pending against him on a criminal case.

Q. But, the fact of the matter is, a newspaper could be threatened with this decree, is that not so?

A. I for myself would never have used any threat because I did not need any more newspapers.

Q. What about your assistant, Dr. Winkler? Was he above using such threats?

A. He also knew exactly my position that I was not eager to buy additional newspapers.

Q. But you bought them?

A. I only bought newspapers which were offered voluntarily but later on there was a certain pressure on me by the Gauleiters to buy newspapers and those Gauleiters were quite powerful people and they would tell me to buy certain newspapers.

Q. Speaking of Gauleiters, did you ever form a newspaper holding company, by the name of Phoenix?

A. Yes, that is right.

Q. Do you recall the original capital of this financial outfit?

A. Well, the matter about the Phoenix Holding Company was the following. In order to secure for myself the benevolence of the quite dangerous Gauleiters, who always said that the Eher Publishing Company was making money through the Gau newspapers, I founded a separate holding company, the Standarte, and I could always tell the Gauleiters that the profits were put into this holding company and did not reach the Eher Publishing House but were used to increase the business of the Gau newspapers. There was another difference. Into the Phoenix Holding Company, or as we called it, Dachgesellschaft, we took former

Catholic newspapers mainly. There was another holding company, I don't recall the name, into which former German national newspapers were absorbed, which Hugenberg could not continue. The last one which continued to exist was the Standarte, and another was the Herold Publishing Company. The purpose of these holding companies was to have a more rigid control of the administration of the newspapers.

Q. Now, as I understand your statement, it is to the effect that the Phoenix Company was the device by which various newspapers were acquired, is that right?

A. No. It was a matter of form so as to make it easier to recognize the previous tendency of the newspaper. If it was a former Center newspaper, and so forth, then it would belong to the Phoenix. If it had another direction formerly it would belong to another holding company.

Q. In other words, it was used for the acquisition of newspapers, was it not?

A. Yes. That is true. But it was not actually the Phoenix Holding Company which acquired newspapers because whatever capital might have been there belonged finally to the Eher Publishing House.

Q. Isn't it true that within less than one year this Phoenix Company acquired 365 newspapers of all types and kinds?

A. I don't believe that it was that much.

Q. How many would you say?

A. Perhaps 60 to 80 and that, I think, is a very high estimate.

Q. Well, how many did the Eher Publishing House acquire in the space of a year, taking the best year of its operations?

A. I cannot say so; I am very weak in figures.

Q. You had substantially completed your acquisition of newspapers by 1938, had you not?

A. I had substantially completed acquisition of newspapers as early as 1936 or 1937.

Q. The party had three hundred newspapers in 1933, and between 1,200 and 1,500 by 1941, and you told me you didn't start acquisition of newspapers until 1935 and now you tell me you completed it in 1937. That means that you had acquired between 800 and 1,100 newspapers in the space of two years.

A. I don't remember the figures anymore. But our administrative office has clear statistics on that.

Q. Would you say the computation I just gave you is incorrect?

A. The Phoenix figure you gave is much too high.

Q. I am talking about the other figure.

A. In my estimate it seems to be correct.

Q. Would you consider it a fair statement to say that under the decrees, to which we have referred this morning, and the other things to which we have referred, that newspapers were faced with the alternatives of either being ruined and closed down with no compensation received for the properties or of selling out at the price fixed by your representative?

A. I would have objected strongly if anybody would have worked with such a threat.

Q. I am not speaking of that particularly, but I am speaking of the situation where these newspapers were considered politically undesirable or considered scandal sheets or whatever other reasons there were for closing them down. Those are the situations I am referring to. Isn't it a fact in those situations the publishers were faced with the alternative of having their properties closed down, without any compensation being received, or accepting the price that was offered by your representative?

A. I never bought former scandal sheets.

Q. Now, answer my question.

A. He could look for a person who was nationally or politically reliable and try to get the price from him.

Q. You don't seriously contend there was any competitive bidding for these newspapers, do you?

A. Unfortunately there was no competitive bidding. I would have preferred it because with every new newspaper I had additional work.

Q. And yet, you were the only bidder for most of these papers, isn't that right?

A. I gave a specific order to my agents to look for sons or relatives who could continue the business.

Q. Well, my question still remains that when these newspapers were sold you were the only bidder, isn't that right?

A. Well, as nobody else was available I was the only bidder.

Q. Yes. That is what you told me before. I do not see why you were so reluctant to tell me this time.

A. I only wanted to make my point of view clear, that I always followed a fair price policy in the purchases.

XVIII. GOTTLIEB BERGER*

Excerpts from Testimony of Gottlieb Berger, taken at Nurnberg, Germany, 19 October 1945, 1450-1615, by Lt. Col. Smith Brookhart, IGD. Captain Mark Priceman, Interpreter; Todd Mitchell, Reporter.

The Fate of Red Cross Parcels for War Prisoners

Q. Will you tell us the circumstances under which you were ordered on or about the first of October 1944, to take charge of prisoners of war affairs under the Reichsfuehrer SS Himmler?

A. On the 29th of September 1944, I was ordered to the general headquarters in East Prussia. This surprised me, for the last time I had been there on the 19th of September Himmler explained to me that he had taken charge of the administration of the POW's, and that he would put me in charge of this activity. On that evening of the 29th I had to go with him to see Hitler in order to be introduced to him. I asked him then why I should be selected for this task as I did not feel qualified for the job of a guardian of prisoners, and he told me that it was essential that the prisoner of war organization be kept separate from the concentration camps and that no confusion be permitted to take place. He did not want to go into detail as he did not have a clear picture himself at that time, and he said he would have to discuss it with Field Marshal Keitel.

Q. Then what happened?

A. And so that evening I went over to Hitler's place. Himmler came along and, finally, sometime between midnight and one in the morning I was received by Hitler, who immediately began by reprimanding me because he had been under the impression that I had been in charge of this administration for some time.

Q. What did he say, and what did you say?

A. Hitler was then suffering from the effects of the attempt against his life. He was in poor physical condition, could hardly get up by himself, pus was coming out of his right ear, and he was extremely irritable. I could not possibly repeat now the exact wording of the conversation that took place.

Q. State it in substance.

A. As I said, he was extremely irritable. He said that scandalous conditions prevailed in some of the camps for prisoners of war, that up to fifteen tons of food products had accumulated in some of those camps, and that he had information from officials who had been captured in the uprising in Czechoslovakia to the effect that airborne landings were impending, and we were taking the risk of permitting the landing troops to gain control over those stores of food supplies—food reserves. At this point Himmler intervened, and he suggested that if these food reserves were to be removed expeditiously that the best we could do would be to assign them to the NSV, the National Socialist Welfare organization. Hitler said that he would go along if this was in compliance with international commitments—he used some such term —and in any case, he told me, that by the second of October I would have to issue instructions according to which these food reserves were to be moved within fourteen days, and that whatever remained after that period would be lost to the prisoners of war organization. He also told me that I had been the one who had always been in favor of fair treatment for the eastern prisoners of war, and he said now was the time for me to accept the more unpleasant side of my task of handling them, and, in any case, he wanted to see a copy of the order that I was to issue. As I said, this whole field was entirely new to me, and I didn't know at that time what sort of food products were concerned. When riding back with Himmler I asked him about them and only then I learned from him that these were mercy parcels for prisoners of war which had been transmitted through the Red Cross.

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*Gottlieb Berger was Chief of Central Office of SS; SS Obergruppenfuehrer and General of Waffen-SS; Inspector-General of Prisoners of War; Head of Policy Division of Reich Ministry for Eastern Territories. See also Document 3723-PS, vol. VI, p. 460.

XIX. NIKOLAUS VON FALKENHORST*

Excerpts of Testimony of Nikolaus von Falkenhorst, taken at Nurnberg, Germany, 24 October 1945, 1050-1230, by Col. John H. Amen, IGD. Also present: Richard W. Sonnenfeldt, Interpreter; Anne Daniels, Reporter.

Planning and Execution of the Attack on Norway

A. In February of 1940, I was in the maneuver area in Bavaria —Grafenwoehr in Bavaria. There I received a telegram ordering me to come at once to Berlin to the Fuehrer.

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*Nikolaus von Falkenhorst was a professional soldier with rank of Generaloberst (General). He was commander of the 21st Army (Army of Norway) and Commanding General in Norway until January 1945, when he was relieved. See also document 3151-PS, vol. V, p. 912.

Q. On what approximate date?

A. I arrived in Berlin on either the 20th or 21st of February.

Q. 1940?

A. Yes. 1940. Then on the next day at 11 o'clock, I reported to the Fuehrer in the Reich Chancellery. There I received the order to conduct operations against Denmark and Norway.*

Q. Who else was there at the time?

A. You mean in that room?

Q. Yes.

A. I believe only Field Marshal Keitel. It is also possible that General Jodl was there. I don't know that any more. However, I know that Keitel was there for certain. The enterprise against Norway and Denmark had been decided on by the Fuehrer. The Fuehrer had said to Keitel: "We will do this now. The question is what General to choose for it."

Q. Now, let's just stop for a minute. Did you learn at that conference for how long a time the plans had been under consideration for the attack on Norway?

A. I can't name it exactly, but it was my impression that the whole thing dated back to the fall of 1939.

Q. Now, do you recall from what part of the conversation you gained that impression?

A. That was because it was explained to me that the operation had been worked out by a special staff or a special group of officers in the OKW during the winter.**

Q. And by whom were you told that at the conference?

A. The Fuehrer himself.

Q. And was anything said about who the members of that special committee had been?

A. No. Keitel must know that. May I make a statement?

Q. Yes.

A. It was my impression that the thought of the plan had already existed during the winter, and if I am not mistaken, the Fuehrer told me that. It always had been put aside though, because more important things came up all the time, especially the campaign against France and Belgium. Then came the incident in the Jossingfjord between the German ship, "Altmark," and the English ship, "Cossack," and that was on either the 16th or 17th of February.***

Q. What year?

A. 1940.

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*See documents C–174, vol. VI, p. 1003; 1809–PS, vol. IV, pp. 377, 385 (entry for 21 Feb.).

**See document C–63, vol. VI, p. 883.

***The British cruiser "Cossack" attacked the German steamer "Altmark" in Norwegian territorial waters, 16 Feb. 1940. They released and returned to a British port about 300 British prisoners who had been captured from seven British merchant ships sunk by the German warship "Graf Spee."

Q. All right.

A. This put the whole thing back in motion, or rather, it let it become acute again. That is because two or three days later I was ordered there. That happened on either the 16th or 17th of February, and then I was called on the 20th.

In other words, the incident of the Jossingfjord conditioned the decision to carry out the plan now.

Q. And was that so stated at the conference?

A. No. It was not. However, I sensed the nervousness that was caused by the Jossingfjord affair. Apart from that, the Fuehrer told me that the government of the Reich had knowledge or intelligence that the English intended to land in Norway, and then I received my mission and also the reasons for it.

Q. Now wait just a moment. Prior to the date of this conference with the Fuehrer, had you heard anything about proposed plans for the invasion of Norway?

A. No. Never. If I may be perfectly frank, this conference was the first time that I ever talked with the Fuehrer.

Q. Well, let's go back to the conference and tell me everything which was said at the conference from the beginning to the end.

A. I came to this conference because the Fuehrer had asked Marshal Keitel, "Which General should we take for this conference?" Then Sergeant—I mean Field-Marshal Keitel, suggested me for this. I was chosen for this operation because previously I had been in Finland. Thus I had already been in one overseas operation. The Fuehrer asked General Keitel whether there was any General available who was experienced in an overseas operation, and Keitel said, "Yes, we have General Falkenhorst." The Fuehrer answered, "Well, I don't know him, but I would like to have him come here so that I can see him."

I entered the room and I was made to sit down on a chair. Then I had to tell the Fuehrer about the operations in Finland in 1918. That is, how the transportation had worked out, our cooperation with the Navy, and so on. He said, "Sit down and just tell me how it was," and I did.

Then we got up and he led me to a table that was covered with maps. He said, "We are concerned with something similar this time, an occupation of Norway." Then he pointed to the map and he said, "This is the intelligence; The Reich Government has knowledge that the British intend to make a landing in Norway."

Q. Did he say on what that was based?

A. No. He did not name to me the reasons or the sources from which the Reich Government had received that intelligence.

Then he told me the reasons why this operation had to be carried out. He said that it was important in the conduct of the war, that it was necessary in the conduct of the war, and decisive for the conduct of the war; and especially the last thing, decisive in the conduct of the war.

The reasons were, first the strategic outflanking by England would lead them to the Baltic. He further said that there were no troops in the Baltic, and that thus the coast was not protected. He furthermore said that there were no fortresses, no coast fortifications, and no coast artillery there. He said that through the Baltic the English could make a stab into Berlin and into the heart of Germany.

He furthermore said that the successes in the East—that is, in Poland in 1939—and the successes that were to come in France in 1940, would do him no good because if such a stab were allowed, the spine of both fronts would be broken.

That was the first point, namely, strategic outflanking.

The second point that he made, was the freedom of operations for the German Navy from the Bay of Wilhelmshaven. This freedom would be curtailed in this Bay if the English were to remain in Scotland and Norway, because then we could no longer leave that area.

The third point was imports from overseas along the Norwegian coast, especially ores from Norway.

Those were the three reasons that he gave, and he again said, "important for the conduct of the war, necessary for the conduct of the war, and decisive in the conduct of the war." He emphasized those three points again.

Q. In other words, he made it clear that this was a vital part of the overall plan for the entire war. Is that right?

A. Yes. Absolutely.

Q. And there is no question in your mind about that. Is that right?

A. No. If the Fuehrer tells me that in the presence of Keitel, I have no doubts about it.

Q. And will it refresh your recollection if I suggest to you that Jodl was there also?

A. I think it is possible. I just don't know that any more. I think it is possible. However, Keitel was there for certain.

Q. Well, Jodl's diary shows that he was there.

A. Yes, all well and good if it says that he was there, then he was. I just don't remember it. I talked to the Fuehrer constantly while I was there.

Q. Now, what else was said?

A. I was told that the Fuehrer was charging me with this operation, that soon he would launch the operations against the West, and that he needed this closed front for the protection of the coast. He charged me with the mission and he told me that the Supreme Command of the Army would put five divisions at my disposal. It was again said that the thing had been worked out during the winter and that only the larger harbors and the towns situated there would be considered for a landing.

This thing was not directed against the Norwegian people. It was his intention to occupy only the coasts of Norway and Denmark.

He dismissed me and said that I should come back at 5 o'clock that afternoon and tell him in outline just what my plans were. That is, how I was going to use the five divisions and what my working program was going to be.

Q. Did he explain how Belgium, Holland, Luxemburg were to fit into the general plan?

A. No, not on this occasion. Everything happened very fast. At 11 o'clock there was always a map report to the Fuehrer, and when I came in, all those gentlemen were waiting there already. He just took me in and explained the thing briefly to me, and then he told me that I was dismissed, and he said that he was waiting for the map report.

Q. Well now, what, if anything, did Keitel say in the course of this conference?

A. He didn't say anything, only when I got out afterwards he shook my hand. He said that things had not been planned like that. It had been planned that I was to be merely introduced to the Fuehrer because he had said he didn't know me. However, Keitel also was surprised that I had already received a mission.

Q. And what, if anything, did you say in the course of this conference other than what you have already told us?

A. Nothing at all. If I may make this statement here, I went away from there and went to town and bought a Baedeker, a travel guide, in order to find out just what Norway was like. I didn't have any idea, and I had to find out what all the harbors were, how many inhabitants there were, and just what kind of a country it was. I had no idea about the whole thing.

Q. Jodl's diary says that you accepted that appointment joyfully. Is that correct?*

A. Well, I was so surprised, I really don't know. I was so surprised that right then and there I didn't know what to say. I hadn't penetrated the material or the whole thing at all, and I didn't even know what I was facing.

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*See document 1809-PS, vol. IV, pp. 377, 385 (entry for 21 Feb.).

Q. Well, what did you do between the close of the conference and 5 o'clock that afternoon?

A. I went to my hotel and I worked on this Baedeker, and I thought about what to do with these five divisions. Then, at 5 o'clock in the afternoon, I went back to the Reich Chancellery, that is, back to the Fuehrer.

Q. And who else was there?

A. Keitel must have certainly been there, and it is likely that Jodl was there. It may have been that he went out and came back, but I think he was there too. He must have been there.

Q. Now tell us what happened at this conference.

A. I went back at 5 o'clock and we again went back to the map table. We talked about the five divisions and what was to be done with them. During the study and the work that had gone before in the winter, it was thought that one division was to be committed at Oslo, one at Stavanger, one at Bergen, one at Narvik, and one at Trondheim. There wasn't much else you could do, because they were the large harbors.

Q. Where had you learned that there was the plan previously agreed upon?

A. The Fuehrer told me that. He said that he had ordered the study to be made, and it was carried out in the OKW.

Q. Were those previous plans in writing?

A. I never saw the plans. If I may, however, I would like to offer you another thought here. I think that Captain Kranke of the Navy, later Admiral Kranke, was involved in that, because if you want to carry on operations overseas, you just have to do it with the help of the Navy, and I think he worked on those plans.

Q. All right.

A. Then, at 5 o'clock in the afternoon it was discussed again that there was one great danger in this whole enterprise, namely, the English fleet at large. The Fuehrer insisted on absolute secrecy so that the British would not receive any knowledge of our intentions. The Fuehrer personally took me under oath, or quasi under oath, by shaking my hand. Then I received authorization at once to transfer my staff from Koblenz to Berlin; however, only those that were absolutely necessary for the work.

Then I also received a consultant from the Navy—that is, Captain Kranke, or Admiral Kranke—and a Colonel from the Air Forces. I furthermore received an order to establish my office and the place where we were going to work in the Reich War Ministry. A small passage was cleared for us, and we were completely separate there. I believe there was even a guard there, and we were completely alone. We used the word "Weseruebung" for camouflage, and as the code name for that operation.

That is essentially what was discussed after 5 o'clock that afternoon.

If I may repeat it again in summary, the plan and the idea as such was fixed. I was only put into the picture so that I could effect the actual military execution of those plans.

The Fuehrer also said to me—and I must leave it open now whether this was on the 20th or possibly two days later—that things were very urgent and that I should hurry up with my work. He was very worried that an English operation would preclude ours. Then I was dismissed.

First I went back to Koblenz and got those of my staff whom I wanted to have up there. Then I went to the Reich Chancellery every second day and reported to either Keitel or the Fuehrer on the progress of the operation. I was able to report on the 20th of March that I had concluded my preparations; that included all the work, for instance, concerning logistics, and also how troop transports should be loaded, and so on.

There was one innovation here, and that was a thought that originated with the Fuehrer, namely, that troops were not to be loaded on troop transports, but on men-of-war. I believe his thought was that if we were to put together a fleet of transports, that then the English would get to know about it and interfere. Thus, all the troops were loaded on to the warships, that is, just as many as they could possibly hold; and destroyers, cruisers, battle cruisers and battleships were used for that. Since we only had a very small navy, it was impossible to load the total of the five divisions on those ships. Thus, a fleet of transports was commandeered which was to follow the first wave. They were to transport the additional troops, supplies of food, horses, and vehicles of all kinds.

This transport fleet was not to travel in a closed convoy, but in waves, so that, say, each day one ship would arrive, or something like that, so that not too many of them would be at sea at one time. For instance, it so happened that only ten destroyers went to the northernmost point, that is, Narvik. Then there was an interval because the next boats went to Trondheim. They were cruisers and they left some few days later because it was not so far. The same applied to Bergen, Stavanger, and Oslo. That is, it was a little at a time, and by this method the whole thing was loosened up, so to speak.

I asked what the starting date of the operation was going to be, and this was determined by the Navy. At first the 8th of April was suggested as the starting date of the operation. That is the last day when there are still some Northern lights at dawn on the Norwegian coast.

Q. Who had charge of the naval end?

A. Admiral Raeder. Grand-Admiral Raeder was responsible for the fleet. My consultant was Admiral Kranke; and he, on the other side, worked with Schwindt. He had a command in the fleet under Raeder, but Raeder was responsible for the whole thing.

Things were handled like this in Germany: If we were aboard a warship, we had no command jurisdiction. In other words, all orders, decisions, and so forth, were made by the Navy. I ordered where the ships were to proceed to, but during the actual trip the Navy had the entire responsibility. Thus it happened that the Navy had such an important part in this.

Q. Well now, you say the first plan was to make the initial attack on 8 April; is that right?

A. Then it was put on the 9th of April because we had suffered damage to the propellers of some ships from ice in the Baltic.

Q. Was it a part of the plan to attack on a dark night?

A. The application of a dark night in this attack was not discussed at all. The dawn, as such, played a great part in this, and the meteorologists worked out that the most favorable time would be between 5:15 and 5:30 a.m. Before 5:15 it would be very dark, and after 5:30 it would be practically daylight, because the midnight sun is very strong in those parts.

There were several batteries of coast artillery on the Norwegian coast, and they would be silenced first. There were several of them at Christiansund and also at Bergen, and crews had to be taken from the warships and put ashore by motor boats. All this had to be done in the time between 5:15 and 5:30.

Then it was ordered that for the whole front, right down from Narvik, Trondheim, Stavanger, Christiansund, Oslo, and Bergen, and also Denmark, 5:15 a.m. of the 9th of April 1940, was to be regarded as zero hour; that is, as the actual beginning of this operation.

Q. Whose orders were those?

A. This whole thing was worked out with the calculations that the Navy made. The Navy and I agreed on that order, and we submitted it to the Fuehrer and he approved it. This agreed with all the desires of the Navy.

Of course, the specific order that at 5:15 all those boats were to be at their positions—that is, facing those ports—naturally was given by Grand-Admiral Raeder.

Now, here is quite another thing that happened in addition. A so-called diplomatic step was to be taken at 5:15 a.m. on that day. This diplomatic step was to be effected in such a way that the two envoys in Copenhagen and Oslo—it was Minister von Renthe-Fink in Copenhagen and Brauer in Oslo—were to take a written representation to the governments to which they were accredited at 5:15 a.m. on the same date. I have no idea as to what the contents of those representations were. I only knew of the intention to make such representations.

Then, when I left Berlin to go to my command post at Hamburg, I again reminded Keitel that such a diplomatic step was to be taken, so it would not be forgotten.

Q. What, if anything, did Ribbentrop have to do with this operation?

A. I don't know. I really don't know what he had to do with it. It was my impression that the Fuehrer did this thing alone, and only informed Ribbentrop about it at the very last moment for the sake of secrecy. I believe it was just at the very last moment. At any rate, I know that it was because of the secrecy of the operation.

It seems to me that as far as the negotiations that were entered into by Brauer in Oslo were concerned, there was a rider calling for negotiations with Quisling. I know that in Denmark, the discussions between Minister Renthe-Fink and the Danish King resulted in quick success. They would have led to success in Oslo also if the negotiations had been undertaken with the Norwegian King, who is the brother of the Danish King, and if it had not been insisted upon that Quisling was to head the Government.

I was already in Oslo—that is, I had already landed there—and Brauer was still negotiating with the King about it.

This was not acceptable to the King. He was willing to negotiate as his brother had done in the case of Denmark. He realized that primarily it was our wish to occupy the coast of Norway. However, it was not acceptable to him to have Quisling in the government. Naturally, I regretted this very much because this whole thing only meant one thing to me, namely, combat. Otherwise it would have been a peaceful occupation, just as it happened in the case of Denmark. We didn't want to fight there. All we wanted to do was to be able to occupy the coast.

I must make one addition to the narrative that I have related to you so far.

Just before I went to Hamburg—it was either on the last day of March, that is, the 31st day of March, or on the 1st of April—

the Fuehrer called together all the Admirals and Generals concerned in this operation, and discussed the operation with them.

Q. On what date was this?

A. I am sorry, I don't have my diary any more, but it was either at the end of March or the beginning of April. It could have been on either the 31st or the 30th of March or the 1st of April or the 2nd of April. That is, just as I explained, either the end of March or the beginning of April.

This discussion started at 11 in the morning and lasted until 7 in the evening.

Q. Where did it take place?

A. In the Reich Chancellery. He talked to each single General and each single Admiral. He listened to each General and had him explain exactly what his task was, even to the commanders of the boats, and he discussed with them whether they would drop men to the left or to the right of a certain objective. He went into everything. It was his idea. It was his plan. It was his war.

Naturally, the Navy was much involved in this because they were responsible for the ships. Goering was not very much interested in this. Brauchitsch did not participate in it at all.

I directed the operations from Hamburg. I lived in Hamburg and I was in Hamburg on the famous day, the 9th of April, the day of the landing. I lived there together with the Commanding General of the Air Forces for that operation.

Q. Who was that?

A. General Lackner. He was the Commanding General of the Tenth Corps of the Air Forces.

Then on my left I had the North Sea Naval Station at Wilhelmshaven, and on my right I had the Baltic Naval Station at Kiel. Thus it was the best possible place for me to be; and it was facilitated for me to receive the reports of the Navy about the landing because the whole first phase was carried out by the Navy. Because this whole landing did not take place according to plan, and especially at Olso, I stayed in Hamburg during the entire day and night.

Then, on the 10th of April I flew to Olso by plane. I landed at 5 o'clock in the afternoon at the airport of Oslo, where Minister Brauer received me. He was there. He told me at once that his mission had failed because of that rider about Quisling. He made all kinds of other suggestions, and since the only cable and telephone connection to Berlin ended in my official residence, he stayed with me and made all his telephone calls from there.

He made several suggestions there, and he also asked me whether I would agree to strike out this Quisling condition. I said I would, and he was to telephone to Berlin to say that I was agreed in that, because it was my ambition to prevent any combat if I could.

Q. Who had insisted upon the Quisling rider in the first place?

A. All that originated from the Fuehrer. That must have been contained in the directive. However, I never saw this general directive because I left before it was issued, but Keitel will know that.

The answer that came back from Berlin was very simple. Brauer was dismissed and sent somewhere else. Thus his activities in Oslo as a German envoy came to an abrupt halt, and we understood that they were not content with him.

Then a Reich Commissioner was appointed, and he was the former Gauleiter of Essen, Terboven. He was transported in an awful hurry to Berlin by plane, and then from Berlin he was put on another plane and sent to Oslo. Thus was initiated the activity of Terboven, who naturally supported Quisling with everything at his disposal.

That is how the chapter of Terboven-Quisling came into being.

Q. Well, what happened next? Now we have you out at the airfield at Oslo.

A. I went into quarters at Oslo. Then started the elimination of resistance, which was showing up in many places of the country because the order for mobilization had been made public there. The mobilization was never effected entirely. In other words, we arrived in the middle of mobilization. But then, north of Oslo, we suddenly encountered the British. The British had landed at Aandalsnes and Namsos. Some of the harbors remained open because we did not have enough warships to land in all of them. The English recognized this immediately and landed there.

Then followed the fight against the British at the road between Aandalsnes and Namsos, around Lillehammer, Otta, Dombaasnes, and Namsos.

The Fuehrer again repeated his request for me to hurry, because he did not want to start the operation against France unless the Norwegian operation was completed. He wanted to have the security of the coast, and he wanted to be covered, up there.

I have to make a further addition here so the significance of this won't be forgotten.

We started our operation on the 9th of April. At the beginning of April, on either the 5th or 6th of April, the English laid mines along the Norwegian coast. This caused extreme nervousness in Berlin because the Fuehrer and the OKW both thought to observe in this the first preparations for an English landing, and they were given to the apprehension that both of these landings would coincide.

After we were able to cause the English to go back to their boats at Aandalsnes, we moved our command post. We now had communications with Trondheim, and we moved our command post there, and I lived there together with the representative of the Air Forces, Stumpff, and also with Admiral Boehm, the representative of the Navy.

Now comes the last phase of our fight in Norway, namely, the fight for Narvik.

In Narvik things really had come to a head because only very few troops could be transported on those ten destroyers. Through the neglect of the Navy, the English had been able to penetrate the harbor of Narvik on the 10th of April, and they shot up every last one of those ten destroyers. The leader of those destroyers and the commandant of the flotilla there, Captain Bonte, was killed in that engagement.

Thus it was made very difficult to give any support to General Dietl, who was in charge at Narvik. It had been prepared that a fleet of transports should come to bring him further troops and supplies, but naturally they could not come there.

The Norwegian mobilization had been effected fully at Narvik, and there was located the Sixth Norwegian Division. Also, the Supreme Commander of the Norwegian Army was there, General Ruge; and somewhere around there—I am sorry that I cannot give you the name of the place now, but somewhere around there —was also His Majesty the King. I believe it was Tromsoe or Harstat. Then, in addition to that, the English landed there.

In addition to that, we also faced French mountain troops and Polish troops. The French troops were under General Bethouart. I have forgotten the name of the Polish Commander, but at any rate General Dietl faced great superiority.

Then, General Dietl was pressed further up on to the mountain, and it couldn't happen any differently there. There are some terrific mountains there, and they were pressed back against the Swedish border. They lay there with their backs to it in a half circle. It was extremely difficult to furnish any support to General Dietl. The only way we could do it was via the air forces. However, this could only be done on some days, because there was much fog and poor visibility up there.

However, at the beginning of June I seemed to detect a crisis in the situation at Narvik. I had a support action under way at that time, and I was using mountain troops which tried to bring support to General Dietl in the way Alpine troops usually do; that is, by establishing small stations here and there for supply. This was more an expedition than anything else. That is, small groups of the men made their way up there in order to bring him supplies and new men, and it was something in the nature of the climb of the mountain Nanga Parbat.

Then I had a telegraphic communication with the OKW and I made the suggestion to Keitel that possibly the Navy could make an attack from the sea, say, on Harstat, in order to bring some help to Dietl from the outside. Most of the warships at that time were still in Trondheim; they were not under my command. Anything that was floating was under Admiral Raeder's jurisdiction.

Then came the day of Dunkirk, and as a consequence of Dunkirk, England recalled the forces that had been at Narvik. This was to the complete surprise of General Ruge. General Ruge had made a visit to the English headquarters in the morning, and they had discussed things. Then, when he came back at 12 o'clock noon, he was told that the English were moving out. He said, "That is impossible; that can't be done. I talked to them this morning." He said, "We will have to check up on that and, if necessary, we will telephone to London." That they did, and London said, "No, they are moving out."

On that day I received a request from Berlin. It said that a request had been received from Stockholm for the neutralization of northern Norway. I can only imagine that this suggestion originated with General Ruge—that is, with the consent of the Norwegian King—and that then the proposal was put to Berlin through Stockholm. With that, northern Norway was to be made a neutral area.

Then terrific detonations took place in the harbor of Narvik, and personally I thought this was due to the actions of German warships. In reality, it was the English who were moving out, and who effected the last destructions.

Then General Dietl advanced. He received reports from the front that the enemy had disappeared, and thus he gradually moved back down the mountain and into Narvik. The German warships were there, although they had not come into the harbor of Narvik—they were further out, near the Lofoten Islands—and they fired upon the retreating English warships and transports. There was an engagement there.

The events of Narvik, as such, were concluded on the 10th of June. Then an armistice was arranged with General Ruge, and also negotiations were entered into about the capitulation of this Sixth Norwegian Division, which I mentioned before. Thus all combat action was ended in Norway, and we proceeded to occupy the coast. The operation against Denmark was completed too. We only occupied the coast there, and the other Danish Islands—that is, Faroerne, Zeeland, and so on—were not occupied. We only had one battalion in Copenhagen; only one battalion there.

That is how the operation in Norway took place.

XX. FRANZ HALDER*

Excerpts from Testimony of Franz Halder, taken at Nurnberg, Germany, 25 February 1946, 1415-1730, by Capt. Sam Harris, JAGD. Also present: Dr. Jan Charmatz, Interpreter; Miss Jean Tuck, Reporter.

Plots to Overthrow the Nazi Government, 1938-40

Q. When did you first participate in any plans against the Nazi Government?

A. It is hard to say, that is chronologically, to fix a time. I can only tell the development of things. The opposition against Hitler existed in the older officers' corps at a very early moment. May I remind you that the chief of the Heeresleitung (high command of the army), Freiherr von Hammerstein, was a very sharp opponent of Hitler's. But he was removed during the very first days of Hitler's power. Whereas, up to Hammerstein's time, and when von Seeckt was chief of the Heeresleitung, the older officers' corps kept clear of political matters, Hammerstein expressed his especial opposition to Hitler in every possible way.

Q. In the early period, I am interested only in general developments. After 1938 we will be more particular.

A. I mention this because the attitude of Hammerstein is one of the reasons or motivations for the attitude of the officers' corps against Hitler. There were some other things in addition to this—the persecution of political opponents after the taking over of power, the terrible events at the Roehm Putsch, Schleicher, Bredow, Kahr, etc. In addition to that, the persecution of the Jews; the struggle against the church. The officers' corps as a whole had been brought up according to rules of the church. This as a whole gives a latent opposition to Hitler and this is the basis for the later attitude towards Hitler. This opposition flared up especially after the removal of General von Fritsch and more particularly afterwards, when the highly esteemed General Beck was removed.

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*Franz Halder fought in World War I, joined the Reichswehr in 1919, entered the Reichswehr Ministry in 1921, and then returned to the Army. He was promoted to Colonel in 1931, Major General in 1934, Lieutenant General in 1936, Artillery General in 1938, and became Chief of the General Staff of the Army in December 1938 which position he held until October 1942. He was arrested after the 20 July 1944 attempt on Hitler's life, although not a participant in the plot. See document 3702-PS, vol. VI, p. 411; affidavit H, vol. VIII, p. 643.

Q. What happened after General Beck's removal?

A. When General Beck told me that he was leaving and that I was supposed to be his successor, I told him that the time for memoranda was over. General Beck had shortly before submitted a memorandum to Hitler which had annoyed Hitler extremely. I told him that I regretted his going away and that force could only be met by force.

Q. What was the date of Beck's memorandum?

A. As far as I remember, Beck's memorandum was submitted in June or July.

Q. What was the substance of that memorandum?

A. Beck's memorandum was the result of an extensive military study in which the situation in the winter of 1937 played an important role. A military study is a task which is solved. In the winter of 1937-1938, before a selected audience, the problem was solved, and in this the commander-in-chief of the army took part.

Q. What was the date of this conference?

A. This conference was in 1938, about March, but the so-called study was before. It might even have been April.

Q. What was the nature of the problem that was studied?

A. By that time the question had been raised and treated as to how Germany should behave in the event of an armed conflict in which Czechoslovakia and France took part, that is, where Germany would be attacked on both sides.

Q. Was this the first of such studies?

A. As far as I know, a study had been done in 1937.

Q. What date in 1937?

A. About the summer.

Q. Who participated in the March 1938 conference?

A. The men in charge of the whole project, senior general staff officers and commanders of the military defense commands, Wehrkreiskommandos. I did not take part myself in the study; I only took part in the final conference.

Q. What were the conclusions at which the participants in the conference arrived?

A. The conclusion was that in a war of two fronts—France on the one side and Czechoslovakia on the other—it would be possible to have initial successes against the weaker opponent, i.e., Czechoslovakia. But at the time that these successes in the East could be reached the military situation in the West would have become so bad that the final outcome would be a defeat for Germany.

Q. Did England figure as a factor in these calculations?

A. As far as I know, no. I do not know if it had been mentioned, but as a factor in that game it had not been considered.

Q. Can you fix the date of the conference more precisely? Was it before or after the absorption of Austria?

A. As far as I remember, afterwards.

Q. But the study which was considered at the conference extended over a period which preceded the absorption of Austria?

A. As far as I remember, yes.

Q. Let us now return to the Beck memorandum. What was there in it which annoyed Hitler, as you previously stated?

A. In this memorandum, Beck said that any action of armed conflict would lead to a world war and therefore warned against any action of policy which might lead to an armed conflict. Beck submitted this memorandum to the commander of the army at that time, General von Brauchitsch, who was to submit it to Hitler.

Q. Did Beck give you a copy of the memorandum?

A. I received this memorandum when Beck transferred his office to me.

Q. Where is it now?

A. I have no notion. I only know that at that time it was in my safe. Brauchitsch confirmed the ideas of this memorandum 100 percent. He called together all the commanding generals and group commanders and made public this memorandum.

Q. Made it public? You mean to a limited circle?

A. The leading generals. The generals fully agreed with this memorandum. In the meantime, Adolf Hitler, who had his spies everywhere, heard about the memorandum. Of course it took a few days before it was presented to Hitler, but already Hitler had asked where it was. Then Brauchitsch submitted the memorandum to him. I was not present at this conference. I therefore know only what Brauchitsch told me about it. He told me the following: He handed the memorandum to Hitler and in broad outline expressed the warning of a policy leading to war.

Q. What was the nature of the warning?

A. The military defeat of Germany. According to the description by Brauchitsch, Hitler said that he, as responsible leader of Germany, must decline all assumptions that his policy would bring about a military conflict.

Q. Conflict or defeat?

A. In the very end it is both, but conflict only was spoken of.

Q. What else did Brauchitsch report?

A. That Hitler's main interest was who got this memorandum. He wondered who might have read it because he was troubled. Brauchitsch replied that only the generals and some higher officers of the OKH had learned about the memorandum. I cannot say more because I did not learn more from Brauchitsch.

Q. What did you say the date of Beck's memorandum was?

A. According to what Brauchitsch told me, it must have been July.

Q. The memorandum, I take it, was based upon the study and the conference which took place in April?

A. Yes.

Q. How do you explain the long interval between April when the conference was concluded, and July, when Beck submitted the memorandum?

A. In the OKH they worked not only on the memorandum. The General Staff was working on the reorganization of the Austrian army and many other things. This was a private affair of Beck's. As far as I know, Beck worked out several drafts—he was a very conscientious worker—but only the final draft was given to Brauchitsch. Of course, Beck knew about the importance of that document—he had to weigh every word of it.

Q. When did Beck resign?

A. On the 31st of August 1938, he handed over his office to me. Furthermore, this so-called resignation was only the consequence of an order of Hitler's and the reason was Beck's memorandum.

Q. Did you inherit from Beck any plans for the invasion of Czechoslovakia?

A. Yes, in May of that year an order was given by Hitler for military pressure on Czechoslovakia which had to be organized that way so that the culminating point was on 1 October. This was done in execution of the orders of the OKW. These were written orders.

Q. I take it, therefore, that even after Beck's memorandum reached Hitler in July 1938, plans continued to be made by Beck and others to carry out the order of May 1938?

A. Yes, it was a military order.

Q. Why wasn't Beck dismissed in July rather than late August, if, as you say, his memorandum precipitated his dismissal?

A. I do not know that, because I do not know the train of thoughts of this enigmatic man, Hitler. Even though I took over the office on 1 September, this change was not made public until 1 November.

Q. What ideas were expressed by Beck to you at the time of his dismissal?

A. We talked about our common opposition against Hitler and then we talked about the danger which this man represented for Germany.

Q. Did you lay any plans with Beck for Hitler's removal?

A. Not with Beck, because Beck at that time was still of the opinion that we should not aim at a revolutionary change, but that an evolution would still bring about Hitler's removal.

Q. What kind of evolution?

A. Beck thought of making known to wider circles that memorandum to Hitler, but I told him at the time that he did not know or understand beasts like Hitler. With such a man or beast you can only compete by using force.

Q. Did you communicate with anyone other than Beck concerning the forcible removal of Hitler?

A. At the time when I became successor to Beck I did.

Q. With whom?

A. With the men of the OKW, who I knew shared the same views, i.e., Oster and Canaris.

Q. When did you contact Canaris on this matter?

A. I had had contact with Canaris before, but immediately after I took up office, Canaris came to see me.

Q. Had you discussed this with Canaris before?

A. No, not the question of a definite plan.

Q. But in a general way?

A. There was an exchange of thoughts, that this system must be removed, but no specific plans.

Q. When, if ever, did Canaris submit a specific plan to you?

A. Canaris never submitted plans. He was the sort of man from whom you learned things and who had possible communications with people whom you did not want to meet in public. I want to describe Canaris as an instigator—a man who instigated but never formulated anything.

Q. Who did the actual formulation?

A. Von Witzleben in 1938.

Q. When was your first contact with von Witzleben on this matter?

A. I had known von Witzleben for a long time. He was my predecessor in Muenster. During the first days of September, he came to me to discuss the overthrow of Hitler.

Q. Did he come at Canaris' suggestion?

A. I do not know. Canaris and von Witzleben never were together. I want to say once more that Canaris never made plans. He was only an instigator of the opposition as a whole. The circle which decided on definite measures was quite separate from the general circle of opposition. If you wanted to start such a plan you had to limit the circle of people active in it to the very minimum. Everyone who knew anything meant a danger. Therefore, I would not talk to people about such things who could not help me. Canaris could not help me. The information I got from Canaris I got without telling him of a definite plan.

Q. Who, besides von Witzleben, were in the immediate group which formulated plans?

A. In order to execute such a military action of force, you must have commanders of troops, those men whose orders are executed immediately by the troops. Von Witzleben gave the task to some of his commanders who were under his orders. May I answer this question by saying that I am sure the commander of the division in Potsdam was in it, a man named Brockdorf-Rantzau—a Major General.

Q. Any others?

A. You see, there is a distinct division between von Witzleben's part in the affair, and my own. Military action was von Witzleben's part.

Q. What was your part?

A. My task was to fix the date when it should take place; and when von Witzleben had done his part, to initiate the commander-in-chief of the army, Brauchitsch.

Q. What do you mean by "initiate" him?

A. To make him effective.

Q. In what respect?

A. If a military putsch is effective and the legal government ceases, then something else must take its place. In the discussions with von Witzleben, I took the stand that I would take part only if future conditions of Government were defined by the German people themselves. In the transitory period from the moment when Hitler ceased to be and the new rule came, this could be done only by an intermediate Government. This was a state which had reigned in Germany under the Weimar Republic. For a short time Seeckt had taken over the executive power, and the Reich Government had retired for a period. Such a transitory period was necessary in order to give the German people a chance to make up their minds and to show to the German people what sort of men were at the head of the German state. The material for this enlightenment of the people had been collected by other people, like Canaris.

Q. Do I understand you to say that during this period, Brauchitsch was to be head of the state?

A. Yes. I did not talk over these things with Brauchitsch because I wanted to tell him at the very last moment. We had thought of a civilian as the eventual head of such a Government.

Q. Like whom?

A. Von Neurath. The name Gessler had also been mentioned. These were only those which I wanted to submit to Brauchitsch at the very last moment.

Q. Hadn't you spoken to him about this before?

A. I had never talked expressly to Brauchitsch about this. But he knew my attitude and he had a notion of what was going on. Once he came to see me when von Witzleben was with me, and von Witzleben spoke in such a way that Brauchitsch could not help but understand unless he was deaf. May I say why I did that. It is clear that such an opinion of the state of Adolf Hitler could be betrayed any moment. It might not succeed. In this case I had to keep apart my commander-in-chief. I had to keep him clear of this. I may play with my own head, but not someone else's.

It had been planned to occupy by military force the Reich Chancellory and those Reich offices, particularly Ministries, which were administered by Party members, and close supporters of Hitler, with the express intention of avoiding bloodshed and then trying the group before the whole German nation. As to the police force, Count Helldorf, the police president of Berlin and its environs who was a Party member, was at the disposal of the plan.

Q. Had you drawn up a slate of officers to succeed the Nazis you planned to depose?

A. No, I am a soldier, not a politician. This had to be prescribed by the person who would be head of this new Government, von Neurath, or Gessler, or even Noske.

Q. Noske, who was that?

A. A Social-Democrat. He was president of Hanover.

Q. Were there others besides von Witzleben, Helldorf, and Brockdorf-Rantzau in the immediate circle which was charged with the execution of the plot?

A. Not that I know of.

Q. Do you know of any persons besides Canaris who were in what you term the "general circle of opposition"?

A. In Canaris' circle, it was mostly General Oster. Furthermore, other persons without any connection with Canaris, or without any connection I could see, came to say that the army should remove Hitler.

Q. Who?

A. For example, Goerdeler and Schacht.

Q. When did Schacht come to see you?

A. That was the end of September 1938—quite shortly before the visit of Mr. Chamberlain to Munich was announced.

Q. What was the purpose of his visit?

A. The purpose of his visit was to convince me that Hitler must be removed and that only the army had the possibility of doing this.

Q. What reasons, if any, did he advance?

A. There was an enormous depression among all judicious German people who feared an armed conflict on account of the Sudeten question. It was felt that Hitler was impossible as head of our German people and that he was leading us only into misery.

Q. Had you known Schacht before this visit?

A. I knew Schacht only superficially. I knew that he was a man of prestige and that he was friendly with Beck. My attention had been drawn to Schacht by one of my collaborators, who only later became important with respect to this question, that is General Wagner, Quartermaster General. Furthermore, I knew about Schacht from Oster, who was the intermediary in the visit of Schacht.

Q. In what respect had Wagner drawn your attention to Schacht?

A. He told me that the attitude of Schacht was very sharply against Hitler.

Q. In what particulars?

A. That he deplored all the baseness of the system of Adolf Hitler which was built up on lies and murder, and that he deplored them to the highest degree. I do not remember that questions of foreign policy had even been mentioned by Wagner.

Q. Did Beck ever speak to you about Schacht?

A. I only heard from others that Schacht belonged to a circle which met with Beck and among whom were Goerdeler and Popitz. I heard this only in conversations and therefore cannot take an oath on it.

Q. How did Schacht come to visit you?

A. He was brought there by Colonel Oster; and Schacht was accompanied by another man whom I saw for the first time, by the name of Gisevius.

Q. Who was Gisevius?

A. I only know that Gisevius at that time was in the SD service, and I think Beck had the SD under his orders. I knew Gisevius by name from Oster and Canaris because he was their best source for knowing about the meanness of the SD service. These two (Canaris and Gisevius) were very close and Gisevius went to Switzerland and did not come back from there. The SD wanted him back but Gisevius refused. Gisevius knows the whole SD business very thoroughly. I met the sister of this man Gisevius in the concentration camp when I was imprisoned. She was put in prison because her brother would not come back from Switzerland.

Q. In your conversation with Schacht and Gisevius, did Schacht outline any precise plans for the overthrow of the Hitler Government?

A. In no way. He only demanded that this man should be overthrown. He only wanted me to make efforts for the OKH to do something.

Q. Had Schacht discussed this matter with Beck in any way?

A. I have no idea. I do not know whether he had any dealings with Beck regarding these matters. In discussions with Beck in the year 1939, he did not mention the name Schacht.

Q. Did Schacht mention any negotiations he had conducted with Beck?

A. No.

Q. Did Schacht indicate that he knew anything of your conversations with von Witzleben?

A. No.

Q. Where did your conversation with Schacht and Gisevius take place?

A. This discussion took place in my private apartment. Schacht had expressed a wish not to see me in my office but as privately and unobserved as possible. I lived in a very quiet suburb, and after dusk, at about 9:00 p. m., Oster came with Schacht and Gisevius to my apartment. The discussion lasted more than two hours.

Q. What else besides what you have already mentioned did you discuss?

A. Always the same thing. Gisevius was very well-informed about the activities of the SD service and he told us many details. I was under the impression that Schacht believed that he had to incite me and that he had to convince me first that it would be necessary.

Q. Wasn't the real basis of Schacht's opposition to Hitler that he feared Hitler would lead Germany into a war which she would lose?

A. I do not think so. I think that it was the general fear which I found in the whole German people, and especially at the Reichsparteitag in September, that Adolf Hitler would bring about an armed conflict in the solution of the Sudeten question.

Q. Well, wasn't his primary argument that Hitler was leading the German people into a war which they would lose?

A. The question of losing was not discussed.

Q. But it was implicit in your discussion of the question of entering into an armed conflict, wasn't it?

A. Yes—into an armed conflict, instead of the thing necessary for Germany, that is, peace, quiet, and work. If the question about the awful deeds of the regime preoccupied Schacht more I cannot say.

Q. Did Schacht mention any way of resolving the conflicts over the Sudetenland and the Polish Corridor which were being agitated at that time?

A. I would never have entered into a political question. I know nothing about politics. As little as I like it when military laymen express themselves about military problems, as little do I want to express myself on political matters.

Q. Did you discuss with Schacht the possibility of his obtaining a position in the new Government which would succeed the Hitler Government you planned to overthrow?

A. Apparently it is presumed that I discussed with Schacht my intentions. I never thought of such a thing. I had known Dr. Schacht very superficially. I had only met him once. I saw Gisevius for the first time. Do you think an old fox such as I am would discuss my plans with unknown people?

Q. They were discussing them with you. You were as unknown to them as they were to you, weren't you?

A. Yes certainly, but in this way my answer to Schacht was made: I told him that there were people who wanted to get rid of Hitler, but I also told him that those people who put Hitler into power should decide how to get rid of him.

Q. Meaning whom?

A. In general, political circles.

Q. Including Schacht?

A. No. I did not know about Schacht, but I had gathered experience in the years 1931 to 1934 when I was chief of the Wehrkreis Muenster, Westphalia, where I had talked to the industrialists and where I warned these people about these things.

Q. And you suggested to Schacht that he should go to these people to dislodge Hitler?

A. I did not mention any names. I said, "You elected Hitler, you put him into power. We soldiers had no right to vote."

Q. Well, did you disclose to him that you were sympathetic to the plan?

A. I made him feel that I, in my opposition to Hitler, was just as strict as he, and I could not then deny it because this was generally known. I want to state that I only did it because of the misery of my people.

Q. Did what?

A. That I became revolutionary.

Q. What happened to the plan you and von Witzleben had formulated?

A. Adolf Hitler was at the Berghof at the time when Schacht was with me. Von Witzleben was ready with his preparations. But they could be put into action only after Hitler had come back to Berlin. On the day when Schacht—in the evening—had been to see me, I learned that Hitler had come back to Berlin. I communicated with von Witzleben at once. He came to see me in my office during the noon hours. We discussed the matters. He requested that I give him the order of execution. We discussed other details—how much time he needed for the other preparation, etc. During this discussion, the news came that the British Prime Minister and the French Premier had come to Hitler for a discussion. This was in the presence of von Witzleben and therefore I took back the order of execution because, owing to this fact, the entire basis for the action had been taken away.

Q. Why?

A. People who consider revolutions from the historical, philosophical point of view can distinguish between three conditions for a successful revolutionary action. The first condition is a clear and resolute leadership. The second condition is the readiness of the masses of the people to follow the idea of the revolution. The third condition is the right choice of time. According to our views, the first condition of a clear resolute leadership was there. The second condition we thought fulfilled too, because the fear of an armed conflict was a heavy burden on the entire German nation. In the days of the Reichsparteitag, I heard moving expressions of the fear of a war policy, not only from non-Party members, but also from Party leaders who feared an armed conflict—the group around von Epp. The German people did not want this. Therefore the nation was ready to consent to a revolutionary act for fear of war. The third condition—

the right choice of time—was good because we had to expect, within 48 hours, the order for execution of a military action. Therefore we were firmly convinced that we would be successful.

But now came Mr. Chamberlain, and with one stroke the danger of war was avoided. Hitler returned from Munich as an unbloody victor glorified by Mr. Chamberlain and M. Daladier. Thus, it was a matter of course that the German people greeted and enjoyed his successes. Even in the circles of Hitler's opponents—the senior officers' corps—those successes of Hitler's made an enormous impression. I do not know if a non-military man can understand what it means to have the Czechoslovak army eliminated by the stroke of a pen, and Czechoslovakia, being stripped of all her fortifications, stood as a newly born child, all naked. With the stroke of a pen, an open victory was attained. The critical hour for force was avoided. One could only wait in case any chance should come up again. I want to emphasize once more what extreme importance must be attributed to this Munich Agreement, not only because of the impression it made upon the population, but also upon the Wehrmacht. From this time on, you could always hear the saying, "Well the Fuehrer will do it somehow; he did it at Munich."

Q. Do I understand you to say that if Chamberlain had not come to Munich, your plan would have been executed, and Hitler would have been deposed?

A. I can only say, the plan would have been executed, I do not know if it would have been successful.

Q. Had you disclosed your plans to any foreign power?

A. There was an emissary in England who told them that was the intention. Oster sent an agent.

Q. To whom?

A. A communication was given, by detour, to the British Foreign Secretary. Oster sent an old officer to England who had relations there, in order to spread this news.

Q. What was his name?

A. I don't remember.

Q. When was this?

A. That must have been in the second half of September.

Q. Before Chamberlain went to Munich?

A. Yes. This officer had been interrogated on this matter. I was interrogated in Wiesbaden as to whether I knew anything about it.

Q. When was the last time you saw Schacht?

A. I saw him about six weeks later. I returned his visit to me. Being a man of his position, I thought it only polite to return the call. I confirmed that the necessity was still there but that one had to wait for another chance, and he may have gathered from this discussion that military circles were not unsympathetic to such a plan.

Q. Did Schacht indicate that he was still interested in getting rid of Hitler?

A. Yes, he expressed it very openly and without mincing words. We parted on the understanding that if there should be any necessity, we would seek each other out.

Q. And did you subsequently seek each other out?

A. No.

Q. Did you have any contact with him after that?

A. No, not until seeing him again in jail and in the concentration camp.

Q. Did you ever seek advice of any sort from Schacht?

A. No, not in questions of politics. I only remember that my Quartermaster General, Wagner, before the Western campaign, asked if he might seek advice from Schacht in currency questions.

Q. When was this?

A. It might have been in April 1940.

Q. In advance of the invasion of Belgium?

A. Yes. In such preparations, the question of currency plays a certain role. We had had a rather disagreeable experience in Poland with the OKW and therefore I tried to get the advice of experts on this. Such things, of course, were not treated by officers but by civilians—we had administrative workers. We had all sorts of experts, but no currency expert. Therefore Wagner wanted to ask Schacht if he might rely upon his advice. I permitted this request. But Schacht declined his cooperation right away and with a sharp refusal.

Q. On what grounds?

A. Because he did not want to have anything to do with the whole thing which he considered madness.

Q. What do you mean by "the whole thing"?

A. The whole western campaign.

Q. Is that what Wagner reported to you?

A. Yes.

Q. Did you personally contact Schacht on this occasion?

A. No, I did not.

Q. Did anyone else, von Witzleben, Oster, Beck, etc., refer to Schacht in any subsequent discussions you had with them?

A. Not von Witzleben. I had presumed this relationship was kept up, and it was indicated to me that General Wagner kept in touch with Schacht and that the communications with Oster were not interrupted. I only remember that in 1942 Wagner gave me Schacht's regards. At any rate, in the years 1939 and 1940, I had no contact with Schacht in this active group. During 1939 and 1940 there was still activity to avoid the western campaign.

Excerpts from Testimony of General Franz Halder, at Nurnberg, Germany, 26 February 1946, 1050-1200, by Captain Sam Harris, JAGD. Also present: Dr. Jan Charmatz, Interpreter; Joan Wakefield, Reporter.

Reasons for Failure to Carry Out Plot Before Invasion of Poland

Q. I should like to resume where we left off yesterday.

A. May I say something in addition to what I said yesterday?

Q. Yes.

A. I have talked once more to General Warlimont, who was present at the conference held by General Beck, about the question of the time.

Q. You mean you talked to Warlimont last night?

A. Yes, and Warlimont recollects that this conference took place only in June. I think it is necessary for me to communicate this to you but I cannot explain this difference in time.

Q. Do you still think it was earlier than June?

A. I had the recollection that it was in spring, but I cannot recollect the date.

Q. Did Warlimont participate in plans for the overthrow of the Hitler Government?

A. No.

Q. At any time?

A. No. May I say Warlimont, in opposition to the other people of the OKW, was a man who, in his thoughts, was about parallel to the people of the OKH. He was not an activist and not a man in whom we could confide; he was not a member of our circle. Naturally you would only bring into your inner circle people of whom you were quite sure, if necessary, you could stake your life. Of course we strictly avoided conversations with other people.

Q. And you did not fully trust Warlimont?

A. I had personal trust in him, but according to his whole character I did not consider him a fighter. Furthermore he was in contact with Jodl and Keitel, and therefore the danger that an unwilling allusion could come from him was too great.

Q. Did you trust Keitel and Jodl?

A. No. Both were absolutely willing tools of Hitler, even though for quite different personal reasons.

Q. What do you mean by that?

A. With Keitel I think the reason for his unlimited allegiance to Hitler was his lack of talent and his feeble character.

Q. And Jodl?

A. Jodl believed in Hitler as a saviour, and Jodl always was very ambitious and he hoped to get a personal position for himself. Jodl, at a very early moment in the year 1936 or 1937, once told me that his military ideal was Napoleon and his marshals. He said, it is not a question as to whether the marshals should go up military ranks from the bottom, but that the right thing was to pick talent in people and put them in their jobs. And the Napoleon whom he thought of as his ideal was Adolf Hitler.

Q. You mentioned yesterday that you were visited by Schacht and Gisevius?

A. Yes.

Q. Can you describe Gisevius?

A. I saw Gisevius only once; my impression of him therefore is no final one. My recollection is of a highly talented, very fluent in his speech, and well educated young man.

Q. I want to pass to a new topic. Prior to the attack on Poland, were any plans laid for the elimination of Hitler?

A. No. At that time there was no possibility.

Q. Why not?

A. After the Czech crisis, the leader of the whole military movement had been transferred to Berlin from Wiesbaden. His successor was a certain General Hase. This is not General von Hassell who was put to death after 20 July, but a General who had the command of an Army in the West, and who died in 1943 or 1944. This General Hase could not be used for the tasks in question here.

Q. How about the Chief of Police?

A. I had no direct contact with the Chief of Police. This contact had been through Witzleben and when Witzleben had gone away I had no contact with Helldorf. I emphasized yesterday a leading role, or rather an executive role, can only be filled by a man who is in command of troops and who can give orders to his commanders whom he knows precisely.

Q. Which of the 3 conditions you outlined yesterday for a successful revolution were lacking before the attack on Poland?

A. The executive military force had been lacking.

Q. How about the support of the people?

A. This is the second point. The conference of Munich had given Adolf Hitler such a rise in prestige, not only with the masses but also with military circles. May I add that Chamberlain when he returned from the Conference to London had been applauded by the people although he did not report success; Adolf Hitler was even more applauded as he had scored a success.

Q. As I understood your statement yesterday, the possible opposition to Hitler from the people arose from the fact that they feared and hated war above everything else.

A. That is right.

Q. Well, if Hitler were irrevocably committed to war, why couldn't you count on the support of the people before the invasion of Poland?

A. You must excuse me if I smile. If I hear the word "irrevocably" connected with Hitler, I must say that nothing was irrevocable, and whoever knew him did not believe one of his strong words.

Q. You believed him on August 22, 1939, didn't you?

A. Not yet. For this, one must know the history of all this development. May I add that not even the people who were present at the speeches or conferences believed in his intention actually to wage war, even less the people who did not know that; and after all there had not been any mobilization and they did not know anything about it. Whoever did not know Adolf Hitler cannot imagine what a master of deception and camouflage this man was.

Q. Do I understand you to say that even on August 22, after the conference at Obersalzberg, which I believe you attended, you and others still believed that Hitler did not intend to attack Poland?*

A. No, because at this conference Hitler said expressly that negotiations with Poland were continuing. On the 26 August when he gave an order to be ready on the 27th, on the very same day he rescinded the order and told the Commander in Chief of the Army, at that time von Brauchitsch, that there were still negotiations with Poland.

Q. Let me read a statement which you recently made to General Miller Hildebrandt which bears upon your last two answers. It says: "I am not letting any charge be made against our

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*See documents L–3, vol. VII, p. 752; 798–PS, vol. III, p. 581; 1014–PS, vol. III, p. 665.

General Staff. I recall that I had to say rather more about Brauchitsch than was strictly necessary. Brauchitsch was just too relenting, too fastidious. I have often felt terribly sorry for him." Your last few answers lend particular emphasis to your stated desire not to let any charge be made against the General Staff.

A. No, I cannot understand this. I recollect this conversation because it had a special reason.

Q. What was that?

A. The reason was this: I had asked General Miller Hildebrandt, who had been my aide, to read my memorandum on the relation, or rather attitude, between OKW and OKH. This memorandum, as far as I know, is here. In this memorandum once, or rather twice, I criticised Brauchitsch. Once in November 1939, in the discussions, or rather arguments, with Hitler, and the second time on his attitude vis-a-vis our aims for revolution in the beginning of 1940. These expressions concerning Brauchitsch of course raised Hildebrandt's interest. They were astonishing to Hildebrandt and in order to explain them, I talked it over with him.

Q. The sentence I was particularly interested in is, "I am not letting any charge be made against our General Staff."

A. You would reproach me for shielding, as former Chief of the General Staff, the officers of whom about 50 ended on the gallows. These officers have no guilt.

Q. They have no guilt now, but there might be some difference of opinion as to their guilt before they reached the gallows.

A. The difference of opinion rises only from lack of knowledge. You reproached me that in spite of my responsibility I tried to overthrow Hitler and that I was ready to overthrow him.

Q. Please be assured that if I were to reproach you, it would be for not overthrowing Hitler.

A. May I make a personal remark. I am the last male member of a family which for 300 years were soldiers. What the duty of a soldier is I know too. I know that in the dictionary of a German soldier the term treason and plot against the State does not exist. I was in the awful dilemma of one, the duty of a soldier, and another, the duty which I considered higher. Innumerable of my old comrades were in the same dilemma. I chose the solution for the duties I deemed higher. The majority of my comrades deemed the duty to the flag higher and essential. You may be assured that this is the worst dilemma that a soldier may be faced with. That is what I wanted to explain.

Excerpts from Testimony of General Franz Halder, taken at Nurnberg, Germany, 26 February 1946, 1600-1805, by Capt. Sam Harris, JAGD. Also present: Dr. Jan. Charmatz, Interpreter; Joan Wakefield, Reporter.

Factors Which Turned Generals Against Hitler

Q. Let us move on to the alleged plans for the overthrow of Hitler in 1939-1940, referred to by you as the 1939-1940 plot. When did that plot originate?

A. I have stated that before the Polish campaign there was no chance to formulate anything. After the Polish campaign, the opposition, so to say, against Adolf Hitler flared up, and a large circle participated in it. I do not know if the reasons in detail are of interest to you?

Q. Yes.

A. It was a question of certain disagreeable events which took place towards the end of the Polish campaign, which had been committed by the SS without our knowledge, but of which we learned, and to which we give the name, the Polish atrocities.

Q. What was the nature of these atrocities?

A. It was, according to our opinion, a series of single acts by the SS in which they illegally and senselessly killed many people.

Q. Why do you say single acts? Didn't you know these acts were committed according to plan?

A. We did not have the impression and the proof of that at that time. I am giving you a picture of that time. Of course later when we learned about the regime of Frank, we saw some connection between these single acts, but at that time they appeared to us as single acts. We thought of no other possibility.

Q. You mean Hans Frank, Governor General of Poland?

A. Yes.

Q. Go on.

A. This was one point of the opposition between the OKH and the OKW. Brauchitsch at that time had a disagreeable discussion with the Fuehrer. Further there were some measures by the SS, the so-called Woman Decree by Himmler. Is it known to you?

Q. Please state it for the purpose of the record.

A. It was the question of a decree of Himmler in which he, in opposition to our principles of morality and married life, asked for the limitless increase of the population. This decree, of course, caused an enormous excitement with the soldiers. You can imagine yourself, the husbands were at the front and the women at home. Furthermore at that time there was a struggle by Hitler and the Party against the Chaplains in the Army, religious services, and so on. Another reason was the increase of the number of SS, which had begun already at that time, and their increasing influence.

Q. In what spheres?

A. In the environment of Hitler all reports from the SS were infallible even in military matters, and what we reported he did not believe. This was shown even more forcefully during the course of the years, but at that time it began. Furthermore there was the struggle of the Party to gain influence on the education and selection of the officers. The Party, at that time, demanded that only such men should be commissioned who were approved by the Party. Also on the question of the executive power there was continuous friction.

Q. May I interrupt. Are you referring to matters that occurred after the Polish campaign or matters which had begun before but had become aggravated? Didn't some of these things start before the Polish campaign?

A. Some of the things may have, yes, but the real development took place afterwards, and in this the opposition played an important role. The whole atmosphere was charged with tension when we came back from the Polish campaign.

Q. Were there any further matters of aggravation?

Difference Between Hitler and Generals on War Against West

A. At this moment I just recollect this. It is possible that other things may be important, but at the moment I cannot think of anything. These were only single symptoms; the main issue was the question of the further waging of war. We of the OKH and the General Staff of the OKH, which was under the orders of Brauchitsch, were of the opinion that for the further development, a political end of the war should be sought, because this conflict, which had started by the declaration of war by England and France, had become a western conflict and should be solved.

Q. Should be solved how?

A. I am not a politician. It was the task of a politician of moderation to make reasonable proposals to end this problem, and it is a matter of course that the Western Powers had no interest to see the West devastated by a war in the western countries.

Q. You mean an amicable settlement instead of a settlement by force of arms?

A. Yes. We wanted a solution without recourse to arms.

Q. Wasn't your idea merely to take a breathing space while you prepared for future campaigns?

A. No. This should have been a final termination of the war. In the Polish campaign Hitler had got the upper hand of us, but now we wanted to put an end to the whole thing.

Q. How about Russia? Wasn't it the plan or intention of the General Staff to wage war against Russia?

A. Never. The whole evolution was always to keep amicable relations with Russia, and I had, on dozens of tactical maneuver journeys, met Russian officers who were attending these maneuvers. It is generally known that a small group worked in Russia on the development of tank weapons and airplanes at the time when we were not allowed to build these things. We always regretted that the political opposition to Communism and the propaganda line of Hitler made impossible a reasonable attitude towards Russia. Before that, this was possible after the Rapallo Treaty under Stresemann and it should have been possible too under Hitler. Besides the Russian question, the Hitler pact with the Russians and the invasion of Poland by the Russians had been clarified, so we had no problem.

Q. We have captured documents which plainly show that as early as 1935 Hitler was irrevocably committed to a war against Russia. Didn't you know about that?

A. He may have talked this over with his political confidants, but I never heard of it and I did not know this idea. Certainly the Commander in Chief of the Army, von Brauchitsch, did not know anything about this either, because he would have certainly told me, and I have a very fresh recollection of the time when he first told me that Hitler had alluded to a possible conflict with Russia.

Q. When was that?

A. At the end of July or at the beginning of August 1940, probably at the beginning of August.

Q. Was that the first you had heard of Hitler's plan or intentions to invade Russia?

A. Yes.

Q. What discussions did you participate in concerning Russia at the time of the invasion of Poland?

A. The thought of Russia at that time, 1939, did not play any role. On the contrary the thought to avoid a settlement by war, that was our main problem. Hitler reproached us afterwards, saying that we had been cowards and that we were afraid, but this was not the question; there were other reasons. We therefore arranged the deployment of our German troops which came from Poland to the West from an exclusively defensive point of view. These thoughts of leading a defensive war were written down in the OKH. Immediately after the Polish war at a very late evening hour, Hitler ordered the Commander in Chief of the Army and myself to his office. We did not know the subject of this conference, which was rather extraordinary, because usually it did not happen that we were alone with him. He put the question to us as to what thoughts we had formulated about the continuation of the war in the West.

Q. When was this?

A. I cannot fix the date; it must have been still in September shortly after the termination of the fighting in Poland. I then stated to him our defensive deployment of our forces in the West. And then quite suddenly he abruptly closed the conference saying that he was too tired that day to continue this conference; I still remember the word tired. I learned afterwards that our thoughts of leading a defensive war had been known at the OKW. Shortly afterwards at the end of September, Hitler made the three Commanders-in-Chief of the three parts of the Armed Forces, and the Chief of the General Staff, come to him and told them of his decision to attack in the West.

Q. This was after the conference you had with Hitler and Brauchitsch?

A. Yes, very shortly. I am sorry to say that all my shorthand diaries have been taken away by the Gestapo.

Q. Did you participate in this conference with the three Chiefs of the Armed Forces and Hitler?

A. Yes.

Q. What occurred there?

A. This was a short giving of orders as was usual in such a type of conference, and Hitler explained that the armed conflict in the West could only be solved by attack; and then the question of Holland and Belgium was tackled. In the first conference—I do not know if this is of interest to you—he did not want to attack Holland.

Q. Only a part of Holland?

A. No.

Q. Not at all?

A. He said that he would only cross the so-called "Maastrichter Zipfel" (Maastricht region). He said he would arrange for that with the Queen of Holland.

Q. But in the second conference he decided to invade all of Holland.

A. Shortly afterwards in October, because the other thing had taken place at the beginning of October, with the same audience another conference took place in which developed essentially the same thoughts, with one exception, that is Holland. He explained at that time that the protection of the Ruhr territory was being used by the enemy forces. And in addition to what he said in previous conferences, he said we should invade Holland and prepare the invasion up to the Grebbe line. I mention this, because from this it is clear that Hitler was not willing to look for a political solution. So the Commander-in-Chief of the Army and the OKH tried with all possible means at least to delay this attack, in order to give a chance for a political solution; and this led, in an interview between Hitler and the Commander-in-Chief of the Army, to a most ugly and disagreeable scene. Through this it was clear that with words of reason you could not tackle this man, and therefore the people who had known each other for a long time, and who had become close to each other in the time of 1938-1939, again rechecked this problem for a forceful solution. These ideas coincided with ideas which came from outside and with which we were approached. These things were not originated from outside, but at the same time from outside to the OKH the same thoughts were intimated.

Q. What persons were involved in these plans for a forceful solution?

A. This group within the OKH was mostly under the influence of the following people: I myself because I was the oldest member, and then Stuelpnagel, Wagner, Grosskurth. This group, of course, had its contact with the Army, to the troops and to the front. The other group was characterized by the personalities of Beck, Goerdeler, Hassell, Popitz. I remember only these names right now. I had no personal contact with people of this group except Goerdeler and Beck. Between these two groups there was a third group which I should like to call the OKW group. This was Canaris Oster, Dohnanyi, a young ministerial director not a soldier, and Thomas. Thomas, on his own initiative, had contacts with the leading people of industry. Thomas came to me several times for conferences. Whether he came by order of Goerdeler or by order of the industrialist I never could ascertain, because it is clear that with respect to the work done by

Thomas—he was in charge of war armament—questions of war potential and armament were discussed, that these things played a certain role in the formulation of his thoughts.

Q. Do you remember any of these discussions with Thomas?

A. I recollect two essential discussions with Thomas, one of which I was reminded of by the Gestapo—that was on 27 November; and I recollect another discussion which probably took place in February, on which occasion he handed over to me written material.

Q. How do you remember the precise date, 27 November, so well?

A. Because this was presented to me by the Gestapo at least 3 dozen times and on this question I was squeezed to the last drop of blood. Some unlucky fellow must have put down this date in his diary and it must have got into the hands of the Gestapo.

Q. What happened at the conference on 27 November 1939?

A. I must state that this was not a conference, but that the Chief of the Wi Ru Amt [War Economy and Armament Office] announced that he should make a report on service matters.

Q. General Thomas reporting to you?

A. Yes.

Q. What was the substance of the 27 November conference?

A. At first Thomas reported the things which were within his line of work which he thought might be of interest to me. I must emphasize that Thomas was not my subordinate, that he belonged to the OKW, so it was an act of politeness to tell me of his business. Starting from the idea that a settlement through arms in the West would lead to a limitless war and that Germany, considering its resources, was not able to lead such a war, he appealed to me to avoid, under any circumstances, such an armed conflict in the West. And starting from this, he continued that if there was no other possibility, then Hitler had to be removed.

Q. Did he mention General von Brauchitsch?

A. Yes. He told me that, in order that I should tell General von Brauchitsch.

Q. What was the end result of the discussion with Thomas?

A. The end result of the discussion was, I do not recollect the words, these words are mine: I know that settlement by a war in the West is a catastrophe. He should be assured that we were following this thought at least as intensively as he was. And then I remember that I gave him on his way a rather pointed remark on his industrial confidants.

Q. What was that?

A. I said in the struggle against Hitler I did not hear anything from the industrialists, but now that the clouds of war begin to gather above the Ruhr territory, now they start to be active.

Q. How did Brauchitsch enter into your discussions with Thomas?

A. Later, I told Thomas that I was at that time not yet sure that Brauchitsch would take part actively in a coup d'etat. A further line of thought goes back to things which my closest collaborators always told me, especially von Stuelpnagel. This idea was that if Brauchitsch cannot make a decision, if he has not enough force of character to make a decision, then you must make a decision, and you must play the game across him to present Brauchitsch with a fait accompli.

Q. Was this also your idea?

A. No. The same idea was expressed by General Beck.

Q. Did you concur?

A. No. I want to give the reasons for what I am saying now, afterwards. I was of the opinion that such an action could not be undertaken by a High Command Agency in the state of war, because through this it shows that it is not united. To give the background, I must say that my influence in my official capacity extended only to the Field Army. Also in the Field Army I could not give any orders, but only in the name, and by order of the Commander-in-Chief. On the so-called Home Front, I had no jurisdiction; the Home Army was under the order of General Fromm, under direct orders of von Brauchitsch. I could not even give him orders in the name of von Brauchitsch. The entire Field Army was in contact with the enemy. A forcible action had to be executed by the forces of the Home Army as the Fuehrer was in Berlin and we were in Sossen. I contacted General Fromm and asked if he was ready for such action. He declared that on his own initiative he would take no such action, but if Brauchitsch would give him such an order he would execute this order as a soldier. Therefore I needed, for the execution of such an action, my Commander-in-Chief, Colonel General von Brauchitsch. Of course all this which I explain now in extenso I did not tell to Thomas. It was not his business.

Friction Between Schacht and Goerdeler

Q. Did you have any contact at all with Schacht during this period?

A. No, with the exception of this superficial contact through Wagner before hostilities against Belgium. From later remarks of Schacht's, with whom I was imprisoned, I gather that he and Goerdeler were in opposition to each other; maybe this was put too strongly, that they did not get along with each other.

Q. Goerdeler was one of the leading lights in the Hitler plot, wasn't he?

A. Nevertheless, I understand Schacht's attitude, because I myself had personally no trust in Goerdeler.

Q. Did Schacht agree with Goerdeler's idea of overthrowing the Hitler regime?

A. I am not informed on that. I only know from the mentioned conference in 1938 that he himself aimed at such a solution.

Why the Plot Finally Fizzled

Q. What happened thereafter; that is, after the conference with General Thomas and after your decision that nothing could be carried through without the approval of General von Brauchitsch?

A. Several attempts were made to familiarize the Commander-in-Chief with this line of thought. I myself in my daily reports brought up this matter and I remember that General von Stuelpnagel asked me if he could mention this in his report to the Commander-in-Chief.

Q. Did you ever discuss it directly with General von Brauchitsch?

A. Not so directly that I said: Now we are going to put Adolf Hitler in prison together. But at every possible chance I stressed the dangers of this regime, but this really was not necessary because this Brauchitsch saw and realized. The difficulty with Brauchitsch was in another sphere. He had to make the decision and he had to take the responsibility. For me it was much simpler to tell him this must be done than for him to execute these things. I discussed these things over and over again with Brauchitsch and I know what he thought of these things. He very rightly always emphasized that the removal of a power in the State is a negative act. The thing that is important for a man who is meddling with the fate of his people is: Can he offer something better? There were two more essential thoughts. The German Army was facing the enemy. We had a fully armed enemy in front of us; the French and the British had deployed their troops, and they were ready to fight. The German army was more than a peacetime army, as in 1938. It was taken from all layers of the population and therefore felt the thoughts of all layers of the population. And the officers' corps—in 1938 in a peacetime officers' corps everyone knew everyone else, but in 1940 there was an officers' corps mostly composed of reserve officers, which gave another picture of the Army. There was a danger that the tool, the German Army, the moment you tried to make a coup d'etat, would break. That was one of the ideas.

The second idea, which he repeated to me several times, was: What does the German workman say? Are only some intellectual groups backing this or are the broad masses of the German people backing it? The latter question I could not answer to Brauchitsch, not being a politician. The first question about the structure, how much an idea would be received in the army, I tried to solve. I had directly, and by certain detours, contacted the commanders-in-chief of the army groups and most of the commanders of the armies, hoping that through them I could report to von Brauchitsch that most of the army commanders were making an appeal to him. I had hoped to get General Fromm, the Commander of the Home Army, so far that he would put himself together with his Home Army at the disposal of General Brauchitsch. Both took a long time. It is clear that I could not work in writing, or in any other way that would be observed. I did not succeed in getting for Brauchitsch the united support of the Field Army and the backing of the Home Army.

There were other ideas that decided on Brauchitsch's attitude. If we were in a state of war, if such an action takes place in Germany, this would mean an enormous weakening of the German war potential. This should be understood. The responsibility for such a step could be taken only by a person who had a certain chance or rather a certainty that the military opponents would not interfere in the inner German struggle. To clarify this, Hassell, the former Ambassador in Rome, was active by contacting Great Britain. The contact with Great Britain was there through Hassell, but there was no contact with France and we had no idea what attitude France would take.

The next group of ideas was the inner political situation. We were always told, you must remove Adolf Hitler. Who should succeed Hitler, who should form the government, who should take responsibility for Germany, this we could never find out. That is the positive action, the reconstruction of the German government which should follow the negative act.

Q. Why was it any different in 1939-1940 than in 1938 in that respect?

A. Because Germany was in a state of war. Because it was the free decision of England and France to recognize such a new Government, and from the natural weakness which such an action always brings with it to attack Germany at that time. England and France with their armies were standing at the frontiers, and in the year 1938 no one would have interfered with this inner German matter. One must only ask the commander-in-chief of the other party: What are you doing when there is a discussion on internal politics and if a decomposition of the front begins what will you do? Of course I will take advantage of this weakness. Comparing this with 1938, one must consider that the details of the action, caused through the mobilization of the army, had been entirely changed through the war. We had an enemy standing at our frontier who was ready to attack. That is the fundamental difference. The only similar condition was the fear of the people of further development. Of the three conditions I mentioned, the first condition, the leadership, was not yet given because I was working to contact all the leaders. The second condition, I think, was given because the readiness of the masses was there.

Q. Then the upshot of all this was that the plans did not go through, is that right?

A. Yes.

Q. Let me come back to the statement you made earlier about the SS. You indicated that your original view was that the program of the SS in the Polish Campaign of 1939 was more or less a series of isolated incidents, but that later you were convinced that it was part of an organized program. What was the basis for that opinion?

A. Why I thought there was some connection between these acts? This has a special reason. And the reason is the following: A man reported to me, who was present at a conference of Hitler and Frank, that Hitler took away from the Commander-in-Chief of the Army, the Military Government of Poland which had been prepared, and handed it over to the Governor General at the time this conference took place. In the conference which took place between Hitler and Frank, Hitler himself used the expression: The order which I give you, or rather, the task I give you, is a devilish one. That is how it was told to me.

Q. Who told it to you?

A. Canaris. Other people too had a very disagreeable impression of this very agitated conference. I heard from other sources, but no details. Other words which followed in this conference were as follows: Other people to whom such territories are handed, would ask: "What would you construct? I will ask the opposite."

Q. In other words, I, Hitler, will ask "What did you destroy?"

A. Yes, precisely. I must state that I did not hear these words myself; I only remember them because of the special impression they made on me. And the executive for all these things was the Governor General, and later in other territories, also the SS.

Q. Were you an eye-witness to any of the destruction wrought by the SS?

A. Not in Poland.

Q. In any other place?

A. No. I have only the impression of the enormous destruction which the Russians did.

Q. How about the destruction done by the SS? You mentioned that you learned of the plan to destroy, which was to be executed by the SS.

A. I must state that I did not hear any details, I only heard in the course of conversations from Canaris that this order that Frank got was directed against the intelligentsia, against the priests and the Jews. The later developments in Poland, which we heard about only partly because we had no direct influence, gave me the impression that they were the issue of this conference.

Q. Did you see any of these later developments in Poland?

A. No. I never saw anything. I know of two groups of reports which came in, one a collection of isolated instances—those Brauchitsch discussed personally with Hitler, immediately after the Polish campaign; and the second group was a stack of reports that General Blaskowitz submitted to General Brauchitsch in the short time he had office there. And these reports Brauchitsch submitted to the OKW through channels.

Q. What did these reports show?

A. Shooting of people and mistreatment of the population.

Q. On a wide spread basis?

A. I can remember cases which took place in Northern Poland and another in Lublin, but this is only a superficial recollection.

Q. What happened to the report submitted by von Brauchitsch?

A. Brauchitsch never heard anything of it. The first group Brauchitsch discussed with Himmler.

Q. What did Himmler say?

A. After that Brauchitsch told me, I was not present at this conference, that after a long discussion, Himmler promised he would investigate these cases. Brauchitsch inquired from an officer, whom I know personally, who was with Himmler or rather with Obergruppenfuehrer Wolff, as to what had happened to those things. He got the answer that after investigation the case showed quite another picture. That means nothing ever happened.

Q. And on the second report?

A. This went to Keitel through channels. Whether Brauchitsch discussed this with Keitel, I do not know.

XXI. HANS RICHARD HEMMEN*

Excerpts from Testimony of Hans Richard Hemmen, taken at Nurnberg, Germany, 10 September 1945, 2030-2230, by Lt. Bernard D. Meltzer, USNR. Also present: T/4 Selig Seligman; T/Sgt. Robert Eisenberg; Miss Lillian F. Baxter, Court Reporter.

Occupation Costs Imposed on France by Germany

Q. [In English] Who determined the economic policy with respect to occupied countries?

A. [In English] The Foreign Office and the HPA [Heerespersonalamt—Army Personnel Office].

Q. And there again was the general policy formulated by a group representing the Finance Ministry and the other ministries you mentioned?

A. Yes, the OKW and all of them.

Q. What were the standards governing the amount of occupation cost they were going to ask the French to pay?

A. Under Article 18 of the Armistice Treaty, France paid the cost of occupation. Soon after my delegation was set up the question arose and was discussed in Berlin, and I was invited to take part at the meeting of the HPA. That was in July 1940. Anyway, the question arose and OKW said we should calculate the sum on the basis of such and such an amount of soldiers of our army which we kept in France, the average cost of so and so much, and that came up to twenty million Reichsmarks per day.

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*Hans Richard Hemmen was a professional diplomat specializing in economics from 1918 on. His main function was handling negotiations of trade agreements between Germany and other countries. He was German Charge d'Affaires in Argentina in 1932-33. After the German occupation of France he handled economic matters as a representative of the Foreign Ministry.

Q. Can you remember how many soldiers it was estimated would be in France?

A. Some three millions.

Q. And that three million figure was the basis for determining seven marks per day for each soldier?

A. Yes.

Q. Were those three million soldiers all to be put on occupation duties?

A. Well, I know nothing about that. I do not know even how many soldiers were in France.

Q. Was there any discussion as to considering not only soldiers who were engaged in occupation duties but also those who were there for the defense of France against the Allies?

A. This question was put up by General Huntziger, a French general who had been in Compiegne when the Armistice was signed. Later he was killed in an airplane accident. When I later on had the note from the Foreign Office, General Huntziger said to me he could not give any judgment on the amount because he was a military man and had no means to judge whether it was insufficient, but there was one thing he objected to at once, and that was the rate of exchange, one mark to 20 francs, because he said he was advised that this rate of exchange introduced by the German army was too high, and he asked it to be reconsidered. As to the amount he did consult his government; but he did remark that in Compiegne he had received favorable assurances on signing the Armistice that only the cost of an army of occupation would be charged, and that the cost of an army of operation was distinct. I learned this from him because we were still at war with England, and it was sure that the war would have to be fought on French soil. At Berlin at this meeting nothing was mentioned about that, although of course the OKW was represented. At Compiegne only military people were there with the exception of Hitler, and I referred both questions in writing to Berlin, the rate of exchange, etc. With regard to the rate of exchange, that is a long story because I agreed that it was too high. I have tried my very best to change it; but as to the difference between an operation and an occupation army, I could only refer this question to my Government.

Q. What was the answer?

A. The Foreign Office consulted Keitel and Keitel said he could refer this question to Col. Boehme who was present at Compiegne, and who was then the Chief of Staff of the Military Armistice Commission at Wiesbaden. I went to them and showed them General Huntzinger's question. "I have asked the Foreign Office and Keitel refers the question to you and you will also find his reply there," and Boehme said that he had been in Compiegne and he had been present at whatever was said, and that no difference was mentioned. So I informed General Huntzinger of my action and of the reply I had received, and he said he would leave it to me.

Q. Was there any question raised by Keitel as to whether the three million occupation forces did include the so-called operational forces?

A. I do not know. I have not spoken to Keitel.

Q. Now, did the expenses of occupation vary from year to year, or did they tend to remain constant?

A. Now I must point out one question which is important and that is the condition OKW made. They said that since we were carrying on the war on French territory, the cost must not betray the numerical strength of our armies in France. In consequence, we must ask for a fixed amount over a long period. Now, as to the expense, I have a general judgment from the account. I had no idea how the money was drawn or expended; that was done in Berlin by the Finance Minister, but we had asked that the money be put into an account with the Banque de France in the name of the "Militaerverwaltung" [Military Administration] every 10 days in advance, at the exchange rate of 20-1. They accepted that, as you will see from my memorandum, and started the payments. The French knew always, of course, the amount which stood to their credit, and I also, of course.

Q. You say that military authorities did not want the amount of occupation cost to betray the size of the army. Now the size of the operational army would, of course, vary depending on the military situation. Accordingly, it would seem that the cost of the operational army was considered a legitimate cost by your military authorities to be imposed on the French Government. Have I made myself clear?

A. Yes.

Q. Your occupation army did tend to remain constant subject to redeployment depending on outbreaks and local situations, but most changes that did occur were on the operational side. Am I correct in understanding the policy to be a policy of levying a charge sufficient to cover the costs of the entire army, including both the operational and the occupation army?

A. That is for me a very difficult question. First of all I had no military knowledge at all, as I have never been a military man and had no connections with the military people. Secondly, I had no knowledge of how they in Berlin expended the money paid by the French. I could not calculate for myself whether the amount was in any way correct as to the number of soldiers, and then from the military point of view I really do not know whether one could in fact draw a dividing line between the occupation and operational army. I am not a military man, but I doubt it very much, because from what I observed later on divisions which had been in occupation for a long time were taken into operation.

Q. General Huntziger thought that that division could be made?

A. He thought it could be made. From the French point of view it was natural to draw this distinction, because the French having lost the war had the German army on their soil to fight England.

Q. Was there any attempt made to establish a division of cost based on this distinction?

A. No, never. So far as I know, an attempt was never made, and the question never arose after I told General Huntziger the results of my interviews.

Q. Did the French ever raise with you as a diplomatic representative of the German government the question of international law involved, based on the Hague Convention, which restricts the amount?

A. No. I do not think so. We may inspect the notes which the French wrote on the cost of occupation, but I do not think we will discover a single argument there because, as I was going to say, General Huntziger, after the meeting we had in his hotel, sent his adjutant to me to inform me that the same afternoon he would fly to Vichy and discuss this question with Marshal Petain, and would recommend accepting this amount. Two days afterward he returned and told me it had been agreed.

Q. After the Italian defeat did the German Government demand additional payments based on the former Italian occupation cost which the Italian government had imposed on France?

A. That is something I forgot to mention in my report. The general course of events was this. Soon after we had agreed on twenty millions, Hitler wanted to meet Petain at Montoire. The French Finance Minister, who was a very clever man, saw his chance to reduce the cost of occupation, and he tried to reduce the payments, and he instructed his delegation to write my delegation a note to say that the French Government would stop payments pending a new system which he expected from the meeting at Montoire. I warned them not to take any unilateral action and then they dropped the matter. I do not remember whether it was 1941 or the beginning of 1942 that we started negotiations on the initiative of the French Government to reduce the amount. I refer to the 10 millions—half the amount. Since about the autumn of 1941, there were paid some sixty billion francs on account and it was quite clear to the French that it was too much. After a few weeks we initialled an agreement to reduce the cost of occupation to ten million marks per day. If I remember correctly, that was in June. The daily payment was reduced to 10, and there were some extra three millions of securities transferred. This never came off.

Q. It never came off? It never actually was completed?

A. No. I negotiated it with permission of the Foreign Office, and it was referred home and Ribbentrop hesitated. It was Ribbentrop personally this time. We waited weeks and then months, and after many months had expired the committee refused permission to sign it.

Q. Did the French make the proposal that the occupation cost be reduced or did the German Government make that proposal? Did the German Government make that suggestion in exchange for an increased control over certain French institutions?

A. No. That was the other way around. The German Government agreed to start discussions on a reduction and to promise indeed a substantial reduction if at the same time the control of the French foreign trade in France could be controlled by three commissars with the Banque de France.

Q. I want to know this. Concentrate on the question whether the German Government proposed the reduction in exchange for increase of German control in France.

A. They made it a condition.

Q. And did they make that condition after the French had made the proposal, or did they say to the French: "If you accept those controls, we will reduce the occupation cost"?

A. It is five years ago but if I remember precisely the German demand to exercise a control over trade through agencies or commissars was very much before these negotiations of ten millions. We had agreed on lifting trade restrictions between the free and occupied zones in the sense that trade could cross the line, payments be made and so on, with the exception of transfer of gold. The French, of course, could exercise their own control as to foreign trade and so on. The "Militaerverwaltung" had observed that by giving this liberty between the occupied and unoccupied zone, things were flowing out, and they had wanted from the very beginning to exercise control by these commissars—and that was a very old demand. You will see from the files that in October, September, and November 1940, long before we ever agreed to discuss a reduction in payment, this demand was already made, and in fact general proposals were already agreed on with the French, but the French Government never accepted them, and then the German Government agreed to reduce cost on condition. The two conditions were: (1) to set these commissars to work, and (2) a certain transfer of security.

Q. When the French proposed the reduction of occupation cost, did they claim that the funds which the German Government was getting were being illegally used, e.g., in the black market? What was the nature of the protests against occupation cost?

A. Any claim of that description was justified. These amounts were drawn from the occupation cost account in French francs and given to the black market. That was a clear misuse of the money.

XXII. OSWALD POHL*

Excerpts from Testimony of Oswald Pohl, taken at Nurnberg, Germany, 3 June 1946, 1400-1700, by Col. John Amen, Lt. Col. Smith W. Brookhart, Jr., and Robert M. W. Kempner. Also present: Lt. Joachim von Zastrow and Bert Stein, Interpreters; Anne Daniels, Reporter.

Diversion of Concentration Camp Labor to Armament Industries

Q. Now tell us when you took over the administration of the concentration camps and how that came about.

A. At the occasion of a conversation which I had with Himmler in the summer of 1942—and I had conversations with him about every quarter of a year—he said to me: "Pohl, I have talked to Speer. The war is reaching its climax; the demands of the armament industries are becoming larger and larger, and the securing of the necessary manpower is becoming more and more difficult. Therefore, we have to try to commit this manpower which is in the concentration camps into the armament industry to an increased extent, and I have the intention of transferring this task to you."

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*Oswald Pohl held the following positions: Chief of Administration and Economic Main Office of SS; Ministerialdirektor of the Reich Ministry of the Interior; SS-Obergruppenfuehrer; General of Waffen-SS. Pohl managed to avoid capture until May 1946, when he was discovered working on a farm in the disguise of a farmhand. He was brought to Nurnberg and these interrogations ensued.

I asked him not to do that because, in the meantime, my little office—which at first had been just a small office within the central office of the SS—had, later on, become an independent office for budget and construction. Then, still later on, all the economic questions became mixed up in it, and then it became the WVHA.

I told him, therefore, that in this main office I had so much to do already, because I also had under me the administration of the entire Waffen SS, and of the General SS. I had under me all the economic institutions of the SS. Those were about 50 large, independent enterprises. Also, I had to carry out many special tasks concerning Party and Reich matters. So the transfer to me of new and additional tasks seemed impossible to me.

He told me, however, that the labor commitment of the inmates was so important, and he had no other expert that he could charge with that task, that therefore I would have to do it, in the interest of armaments. He said he would relieve me of all other matters connected with that because Gruppenfuehrer Gluecks was remaining there. Obergruppenfuehrer Eicke had been killed in action in the meantime, and Gluecks was head of this agency, as successor to Eicke.

Q. How soon did you do anything about using the manpower which was needed by Speer in the armament industry?

A. The procedure was discussed with Himmler, but it was done in this way. That was the reason for Himmler's intervention. There was really no method about the thing until that time. The small firms in the Reich that were in want of workers, no matter what branch of the industry they belonged to, addressed themselves to the Inspectorate of the Concentration Camps. Then Gluecks or his representatives allotted so many inmates to them. As a consequence, that meant a strong decentralization of manpower, which it was wished to prevent.

From that time on, Gluecks had to visit me in Berlin once a week. He had to submit the requisitions from the firms to me, and then I decided whether a firm was to get laborers or not. If greater contingents were involved in heavy industry, that is, hundreds of them, the Armaments Ministry was consulted about it. That is, it went through the Armaments Ministry.

The Extermination of Jews at Auschwitz

Q. You brought Hoess into your Division D, Subdivision I.

A. Yes.

Q. What had he done before that?

A. Before that he was commandant of Auschwitz.

Q. And while he was commandant of Auschwitz, what had been his responsibility there?

A. The same as the position of all other commandants, at first, and then he was employed by the Reichsfuehrer SS in the final solution of the Jewish question.

Q. And what was that?

A. The extermination of Jewry.

Q. By what manner or means?

A. As it has been done.

Q. Tell us about it.

A. Jews were brought to Auschwitz and were gassed there.

Q. How many and over what period, were gassed there; and what was done with the bodies?

A. I don't know.

Q. How did Hoess carry out his end of the program at Auschwitz?

A. He carried out the liquidation of the Jews.

Q. And how many did he liquidate there?

A. I really will have to estimate that; I don't know the number.

Q. Well then, I will ask you for your estimate.

A. I have talked to Gluecks about it, but even he did not know the exact figure. We estimated—and Gluecks thought—about three million.*

Transfer of Valuables from Concentration Camp Victims to Reichsbank

Q. What business did you have with Funk?

A. I had no business with him as President of the Reichsbank.

Q. You never had anything to do with him?

A. Funk got foreign currency for us abroad, but I never had anything to do with him directly.

Q. You had other business, aside from foreign currency?

A. Yes. We gave to the Reichsbank all the valuables that we received from these concentration camps, which had been sent to us from the various offices.

Q. Let's discuss the jewelry and gold teeth that were taken from people in the concentration camps. The Reichsbank was informed when such a shipment was to arrive. Is that correct?

A. Yes, that is correct.

Q. Who made the first arrangements concerning that?

A. As I recall, the first arrangements were made by way of the RSHA, in Heydrich's time, I believe.

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*See document 3868–PS, vol. VI, p. 787.

Q. Between Heydrich and the Reichsbank, between Himmler and the Reichsbank, or between whom?

A. Between experts of the RSHA and the Reichsbank. At this moment I only recall that, on several occasions, foreign currency, rings, and other things came from the camps to Berlin, packed in cases, and they were given to the Reichsbank by us.

Q. What was the Reichsbank to do with these gold teeth?

A. They were to evaluate them, and their equivalent was to be deposited at the Reichsbank Treasury.

Q. Hoess has testified that gold bars had also come from Auschwitz.

A. I have seen gold bars, yes. I believe they were also packed in cotton.

Q. Where were they delivered?

A. Also to the Reichsbank.

Q. Which ones went to your medical department?

A. That I don't know.

Q. Where did the gold bars—if they came from Auschwitz—originate?

A. Probably from the Jews who were exterminated.

Q. How was that worked into bars there?

A. I don't know that.

Q. How often did that stuff arrive? We are talking about gold now.

A. I recall exactly that I only saw these gold bars once.

Q. You just wanted to say that it was once or twice. Now what do you want to say, once, twice, three times, or what?

A. I recall very clearly that I have only seen gold bars once. Several times I have seen things like rings and jewelry, but I have only seen gold bars once.

Deposit of Gold Fillings with the Reichsbank

Q. Who took part in those first discussions? Who was the man who would have such discussions?

A. I really don't know. So far as I recall, there were no large discussions. Without my having anything to do with it, those things went to Berlin. I personally told Himmler that. I talked to Himmler and asked him what should be done with all those things; I was told they were supposed to be given to the Reichsbank.

Q. Is that what Himmler told you?

A. Yes.

Q. Did Himmler tell you that he had talked with Funk about this matter?

A. I believe that he had talked with Funk about it.

Q. Do you know in detail what they had been talking about in this connection?

A. What they had been talking about, in detail, I cannot say: I do not recall. I once talked with Funk, but it had nothing to do with that.

Q. What did Himmler talk to Funk about, as far as you know, in relation to the order Himmler gave you?

A. I assume that Himmler and Funk discussed the matter, that the valuables from the concentration camps were to be received by the Reichsbank. Subsequently Himmler said to me: "I want you to do that; deliver them to the Reichsbank."

Q. What particular subjects were discussed at that time?

A. That concerned all the valuables that were delivered from the concentration camps at that time.

Q. Was there any doubt about the fact that it concerned dead Jews?

A. No, there was no doubt about it.

Q. Do you say there was no doubt, or there could not have been any doubt?

A. There couldn't have been any doubt.

Q. Why couldn't there have been any doubt? Where could those things have come from otherwise? Tell me, because you can be quite open with me.

A. There couldn't have been any other source.

Q. When three million disappear, there must have been quite a substantial amount of stuff in one camp. That is, three million in one camp alone. That must have been more than just a few sacks full.

A. There must have been a great total amount.

Q. Now let us go back. We had jewels that went down there to the Reichsbank, and we had the gold eyeglass frames. Is that correct?

A. Yes.

Q. What else was there? Please tell us in your own words.

A. All the things that men can have, rings, watches, eyeglass frames, and gold bars.

Q. And what were those gold bars made from?

A. If you ask me now, those gold bars were made from the melting of the various things, among other things, gold fillings.

Q. You have said anything that men can carry.

A. Yes.

Q. What originated from women?

A. Jewelry, pins, broaches.

Q. Anything else? Earrings? Have we mentioned wedding rings?

A. Yes, we had wedding rings also.

Q. What about earrings?

A. Yes, also earrings.

Q. And when you were down there with Puhl didn't you, at that time, open suitcases full of that stuff?

A. Yes, Puhl showed them to me.

Q. Can you recall any particular suitcase in which certain individual things were contained?

A. Yes, he showed me especially valuable rings which had already been assorted.

Q. Now we want to reconstruct the whole thing as realistically as possible. You were down there at the Reichsbank.

A. Yes.

Q. With whom?

A. From my group there were with me Gruppenfuehrer Loerner, Frank, my adjutant, certainly, and several others.

Q. Then Puhl was there?

A. Yes, Puhl was there, and Waldheeker was there, because I know him personally.

Q. Who else?

A. Puhl and Waldheeker. I believe they were the two from the Reichsbank. Afterwards I was together with Funk.

Q. That is exactly what I want to know. Now why didn't you come out with that right at the beginning? That is what I wanted to know.

A. How could I know that you wanted to find out that sort of thing?

Q. All right, very good. Afterwards you were together with Funk. All right.

A. Afterwards we went upstairs and Funk invited us to have dinner with him. There was a huge, round table. In my opinion there were approximately a dozen people present.

Q. And whom did you sit next to?

A. I sat next to Funk.

Q. Now, what did you talk about concerning the beautiful things that you had seen downstairs? Please tell us truthfully and openly.

A. I cannot remember the details exactly, but I think I said that I had seen the Reichsbank for the first time.

Q. Did you say anything about the things which had arrived? What did he say and what did you say?

A. I cannot tell you exactly now what he told me.

Q. Did he tell you anything to the effect that you had delivered the material well and that what had arrived was valuable?

A. That is possible; it is probable that he said such a thing. It is impossible for me to recall in detail the exact words he used when he spoke to me.

Q. But it was in that sense?

A. Yes, I think the conversation was conducted in that sense.

Q. How many of the Reichsbank people were present, and how many of yours? How many people were present at the round table?

A. I estimate about twelve people.

Q. Half your people and half Reichsbank people?

A. Yes, approximately. We had been invited in general by the Reichsbank.

Q. I would like to come back once more to the Reichsbank, downstairs. You were standing around with Puhl. You opened a few of the cases from the SS, and those beautiful jewels were in there. What else was in there among all those things?

A. Foreign currency had also been delivered to the Reichsbank.

Q. Did he also show you a case full of earrings and wedding rings?

A. Yes, I had seen cases with rings, especially the more valuable things.

Q. Did he also show you some of those gold bars?

A. I assume so.

Q. Did he make any remark about the fact that you had contributed to the delivery of those gold bars?

A. How do you mean that?

Q. Did he tell you that those gold bars had arrived from the camps?

A. Yes.

Q. Later on, at the meal, was there anything discussed concerning those gold bars?

A. Between my neighbor and myself? Not that I recall. Perhaps, in the beginning, there were a few words exchanged, but during the table conversation nothing further was mentioned along that line.

Q. Funk knew that you had been downstairs, and he told them "bring those people upstairs"?

A. Yes, Funk knew that we had visited the entire Reichsbank. He knew that.

Q. How did Puhl introduce you to Funk at that time?

A. Funk knew me already.

Q. How long had Funk known you, approximately?

A. Previous to that time I had been at Funk's once. That was the only time that I had to do with Funk.

Q. What business was that?

A. I recall that by order of Himmler I had to visit him in connection with textiles; that was in his capacity as Minister of Economy.

Q. What sort of textiles did that concern?

A. Those were the textiles which were concerned with those actions.

Q. Where did those textiles come from?

A. The textiles remained in the camps, and were then given to the textile industry. Subsequently Himmler sent me to Funk to tell him that he, Himmler, hoped that a greater allotment of clothing material would be sent to the SS, that is, that a higher allotment of clothing would be delivered to the SS.

Q. Let me express myself very clearly, in simple German: From the clothing of the dead Jews, the SS were to receive a greater clothing allotment. That is the meaning, in simple German, is it not?

A. That is probably the way it was meant.

Excerpts from Testimony of Oswald Pohl taken at Nurnberg, Germany, 4 June 1946, 1010-1100, by Dr. Robert Kempner, and Lt. Col. Smith W. Brookhart, Jr., IGD. Also present: Bert Stein, Interpreter; Piilani A. Ahuna, Court Reporter.

Himmler Dresses SS Men in Clothes of Dead Jews

Q. Will you put yourself back to the time of your first conversation with Funk?

A. Yes.

Q. What was the approximate date of that conversation?

A. I believe it was the summer of 1944. 1943 or 1944, I don't know exactly, but it was in the summer. It was good weather.

The reason why Himmler sent me there was the ever-increasing scarcity of uniforms, and the small contingent that we received from the textile industry, I believe it was President Kehrl who always declared it was not sufficient.

Q. Thereupon you received the order from Himmler to get in contact with Funk?

A. Yes.

Q. Where did you visit Funk?

A. I visited Funk in the Economics Ministry.

Q. What did you tell him at that time in brief?

A. That Himmler sent me to him and wanted to tell him that he hoped the Waffen SS, at the distribution of the textile contingents, would receive preferential treatment, for Himmler was giving the clothing from the Jews to the Economy during the action against the Jews.

Q. Which Jewish actions are in question?

A. That was the liquidation of the Jews.

Q. What quantities of clothing from dead Jews came into consideration?

A. We really did not talk about quantities in detailed figures.

Q. Did one mean great, large quantities which justified preferential treatment?

A. Yes, that is to be supposed.

Q. From where was the clothing of the dead Jews taken, and where was it delivered?

A. They were stored in Auschwitz, and they were delivered, but where they were delivered I don't know. I do know that Gruppenfuehrer Loerner should know about that. He was in charge of the whole utilization of textiles.

Q. How was that? Did the procedure change or vary in a certain period?

A. The procedure did not change much, I don't believe so.

Q. The affair started already in 1941, did it not?

A. Yes. What do you mean?

Q. So that the Economy must have had something to do with that prior to that time?

A. The Economy had always something to do with it. The things were always turned over to the Economy.

Q. When speaking of the Economy, which agency do you mean?

A. Our textile contingent was always negotiating with President Kehrl.

Excerpts from Testimony of Oswald Pohl, taken at Nurnberg, Germany, 4 June 1946, 1400-1630, by Lt. Col. Smith W. Brookhart, Jr., and Dr. R. M. W. Kempner. Also present: Bert Stein, Interpreter; Piilani A. Ahuna, Court Reporter.

Funk's Implication in Looting of Concentration Camp Victims

Q. I should like to refer to a matter about which I have just checked. The transfer of gold from concentration camps started in the summer of 1942, did it not?

A. Yes.

Q. Is that correct?

A. After I heard that Himmler had a conversation with Funk in the summer of 1942, it must have been the starting point of this matter.

Q. You received your orders from above?

A. Yes.

Q. Do you still think that the textile matter was in 1943 or 1944, or do you say it was earlier?

A. That must, of course, have fallen into the same period.

Q. You have said yesterday, or this morning, that Funk knew what this was all about. Is that correct?

A. Yes, that was so. I said that.

Q. You stated that these were things coming from the actions against the Jews?

A. I told him that those were things which came from the actions against the Jews which were handed over to the textile industries.

Q. Which actions against the Jews are you speaking of and where did they take place? I mean, was it in western or eastern Germany?

A. I do not believe that I explained it any further, because Funk knew.

Q. What did Funk know?

A. Where it came from, otherwise he would have asked me, but I don't remember that he ever asked me and I don't doubt that Himmler has told him about it.

Q. Was it a self-evident matter?

A. Yes, for me it was quite self-evident.

Q. Was it self-evident for him also, that it was not from living Jews?

A. That, I suppose so.

Q. You stated yesterday that the Jewish affair was generally known?

A. Yes.

Q. Do you include Funk in that?

A. Yes.

Q. And what are the two details from which you especially know that Funk knew about these happenings?

A. First, from his conversation with Himmler, secondly from the conversation with me.

Q. About what?

A. About the textiles.

Extermination of Mental Patients

Q. Do you know that Frick and Conti emptied the institutes for the mentally sick and other sick by simply killing the patients?*

A. Yes, that was told.

Q. Do you know whether one sent their old clothing and other things to the SS also and other agencies?

A. No, I don't know that.

Q. What do you know about the whole action?

A. I don't know anything about this action, except that it has taken place.

Execution of Concentration Camp Inmates Needed for Labor

Q. Hoess has told us that you reprimanded him repeatedly because not enough workers were being salvaged out of the shipments to Auschwitz. At the same time, Mueller or someone in the RSHA was ordering more executions.

A. Yes, that's quite possible. It is quite possible that I told Hoess and Gluecks that I have these requests for laborers and I had to have more inmates.

Q. Whom, in the RSHA, did you take it up with? You knew they were causing the executions.

A. I have really not negotiated with the RSHA. Gluecks did that. I have never been there.

Q. You and Gluecks conferred about it.

A. Yes, I have spoken to Gluecks about the fact that I must have more inmates for work. If my request would have been fulfilled, not so many would have been executed. Of course I was interested in getting as much manpower as possible.

Q. It wasn't because you were interested in saving anybody's life, but only because you wanted more labor, wasn't it?

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*See documents 615-PS, vol. III, p. 449; 621-PS, vol. III, p. 451.

A. Yes, at first I only thought of getting more labor. I knew that I had to have more inmates.

Use of Concentration Camp Labor in I. G. Farben Plants

Q. I would like to take up the case of labor in the I. G. Farben industries.

A. You mean of concentration camp inmates?

Q. Yes. When did you first have anything to do with inmates who worked for I. G. Farben?

A. I really cannot tell you that. Once per week Gluecks came to me, usually in Berlin, or when I was out in the plants I went to his office; then he told me that such and such requests are here and we discussed them. The requests that had been granted were then dealt with by Gluecks. He gave instructions to the camp commanders which had to furnish the inmates. The camp commanders were permitted to furnish these inmates only if the armament industries had available lodgings, food supplies, and medical care for them.

Q. Let me refresh you a little on these specified remarks. Commandant of Auschwitz, Hoess, attended at least one conference which dealt with labor for I. G. Farben, and present at this conference were Pohl, yourself, Frank of your office, Gluecks, and Hoess.

A. When Hoess was in Berlin later on—he was a deputy of Gluecks—he was present also, of course. I have always seen him there.

Q. And you had already ordered that a preference be given to I. G. Farben industries over all other plants of the armament industry in furnishing concentration camp labor; this was on the order of Himmler.

A. No, for the time being I do not remember. Perhaps if you will tell me where these inmates were to be employed. Do you mean the large Buna Werke near Auschwitz?

Q. Yes, tell me about that.

A. The large Buna Werke in Auschwitz—Himmler was present there himself. It was a giant plant with 40,000 foreign workers and inmates employed there. That is true. Himmler had repeatedly inquired about it, and asked me how things were there, and said that we were to see to it that enough inmates were furnished so that the job got finished. Previously, I had thought of I. G. Farben as a whole, but now I remember this particular plant in Auschwitz.

Q. But what I have stated is correct, they did have a preference?

A. No, only this one plant was involved.

Q. And how many inmates did you furnish these Buna Werke?

A. I cannot say. I cannot give an exact figure of how many were employed there, there were thousands of them, but how many exactly I don't know. I have told you already that I have seen this construction site repeatedly. The engineers told me that there were at least 30,000 to 40,000 people employed there but how many of this total included inmates I don't know.

Q. If Hoess says that as many as 20,000 were furnished, what would you say?

A. That is quite possible. I told you there were about 40,000 altogether.

Q. When I. G. Farben sent a commission of its representatives to visit Auschwitz, did they first come to you?

A. No. Hoess knew the managers too. I believe they were in frequent contact. I have visited that construction site twice.

But these were all the I. G. Farben officials I knew. They were all there when I visited the site, and I believe they were all from I. G. Farben.

Q. And what is your best estimate as to the number of inmates furnished I. G. Farben as laborers from these camps?

A. That is very hard for me to say. I have to remember the 11 main concentration camps which were later on—every one of these camps had approximately 50 to 80 labor camps, outside labor camps. That means that there were 800 outside labor camps, and how many I. G. Farben had I just don't know.

Q. Approaching it from another angle, what instructions or requests did you get from Speer's office in this connection?

A. You mean concerning this construction site?

Q. Yes, and about the priority that was to be given I. G. Farben.

A. Nothing from Speer personally or his office, but I do remember those from Himmler. I can say with certainty that I did not receive any instructions from Speer, just as certain as I can say that I did get instructions from Himmler.

Q. What was Speer's attitude in regard to the armament and other industrial companies that needed labor?

A. Speer, of course, was highly interested in these armament industries running in high gear and I noticed Speer mostly in the year of 1944. His work was more noticeable in 1944. At that time, the transfer of armament industries underground was organized in a big way, and at that time Obergruppenfuehrer Kammler received a giant order from Speer. 15 large construction sites were involved to get industries underground. That was negotiated between Kammler and Speer. Just because of that, I remember Speer and his office, otherwise I did not have much to do with him.

Q. Of the inmates who were employed in the armament industries, for instance the assignment for I. G. Farben, who received the benefit of such labor? Were the inmates paid wages, was the SS paid anything, or who benefited?

A. These plants had to take upon themselves the obligation to feed, lodge, and give them medical care. Then the plants had to give the inmates the additional food ration for heavy workers, and also they had to give them premiums for doing good work—no money but the most industrious one got chits which could be used for purchases in the canteen. Then they got special food at times, such as potato salad. The plants had to pay their wages, which were equivalent to the wages of a normal worker, to the Reich.

Q. To the Reich Treasury or the SS?

A. To the Reich Treasury, not to the SS.

Q. What was the channel for these payments?

A. The payments were made in this manner. The armament plants paid the money. I have only seen the statistics which Maurer kept in the Amtsgruppe D. The monthly amounts were listed, and the plants paid the amounts to the AMT IV, of which Gluecks was the administrative agency. From there they were paid to the Reich Treasury. The last statistics which I saw were kept for one budget year, and they began on 1 April 1944 until February 1945. The statistics showed the amount of 120,000,000 RM.

Excerpts from Testimony of Oswald Pohl, taken at Nurnberg, Germany, 7 June 1946, 1400-1615, by Lt. Col. Smith W. Brookhart, Jr., IGD. Also present: Joseph Maier, Interpreter; Mabel A. Lesser, Reporter.

German Firms Which Used Concentration Camp Labor

Q. After your first meeting with Speer in 1943 on the labor problems how often would you see him thereafter?

A. Perhaps two or three times, on which occasions I discussed other matters with him, for instance, the providing of wood for the construction of barracks.

Q. How often did you communicate with him by phone or letter?

A. I had very, very little to do with Speer altogether.

Q. Were you always able to meet his demands for labor?

A. We never received any requests from the office of Speer directly because we received them from the individual firms. But it did happen that his subordinate, Saur, called up and suggested that more inmates be sent to this or that firm.

Q. What were the names of the firms?

A. There were thousands of firms. All the armament firms that were in Germany came with their requests to us. Whether it was the Steel Works down to the last factories, they came with requests to us.

Q. I want the names of the principal firms.

A. The names of the main firms, as far as I recall them, were: Heinkel, Messerschmitt, Salzgitter, Brabag-A.G., but there were many, many more.

Q. How about Siemens-Schuchert?

A. I do not recall, that question I wish to leave open.

Q. I. G. Farben?

A. Yes, the I. G. Farben people had the Buna works in Auschwitz.

Q. Krupp?

A. Yes, Krupps had the Berta works in Breslau.

Q. Hermann Goering Werke?

A. The Salzgitter firm is a part of the Hermann Goering Werke.

Q. What about Hermann Goering Werke Coal Mines?

A. I do not recall anything about that. I recall that I saw the Salzgitter Werke and I saw the Berta Werke of Krupp's.

Q. Perhaps it will help you to recall if I mention Dr. Heine of the Hermann Goering Coal Works at Brescze, who, with permission, visited Auschwitz every year and who worked 2,000 inmates from that camp.

A. Yes, I recall him, that is quite true. Yes, there was a labor camp.

Q. Perhaps you will recall more about Siemens-Schuchert if I ask you about an agreement between yourself and Maurer of your Division D(II).

A. Where should that have been?

Q. I am not sure of the location but it was an arrangement made with your agreement.

A. It is entirely possible but I cannot say anything definite at this moment. Perhaps it will come to me later. The SS was a tremendous organization and I do not recall the details at this moment. It is entirely possible, however, that an agreement was made.

Q. Then on a more general basis can you tell us about the problem in 1944 which arose after 100,000 inmates had been promised for labor in Landsberg and Muehldorf and their complex of camps in southern areas and about which Speer complained to you that your Division D was unwilling to furnish these workers?

A. They could not have delivered so many inmates. Where should they take these 100,000 inmates from? I know about Landsberg and Muehldorf; I was once in Muehldorf myself. There were two huge subterranean warehouses which Speer had established there and in both places there were labor camps which had been filled by inmates from Dachau, I believe. But I do not know about sending 100,000 inmates to these places because there were only 30,000 inmates in Dachau. I do not know how large the labor camps there were actually. The labor camp in Muehldorf was rather large. I do not know anything about the one in Landsberg. I was not there.

Himmler's Desire to Save Jews for Bargaining in Peace Negotiations

Q. Do you know what caused Himmler to issue the order, late in 1944, to cease the exterminations?*

A. I do not know anything about an order that Himmler was said to have issued to cease the extermination action. I had an order from Himmler to appear with Gluecks at his office but that was on a different matter altogether.

Q. When and on what matter?

A. That was in March 1945; that was the last time I saw Himmler. He asked Gluecks and me on that occasion how many Jews were still left in concentration camps. We figured out there must have been about 7,000 still left, I do not recall the exact figure. It was then that he gave me the order to visit all the concentration camp commandants to tell them that they were not to touch any Jews any longer. This order I executed but I never received any general order about ceasing the extermination action.

Q. Do you mean that you were able to visit every concentration camp after March 1945?

A. This was my order and as far as I could I visited every camp. It was my instruction to tell every commandant personally about this order that Himmler gave me.

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. What you mean to say is, every camp that had not been liberated or overrun?

A. When I am referring to concentration camps I mean the 11 concentration camps that were under my jurisdiction. Of course I did not visit all the concentration camps. They were too numerous.

Q. Let us have the names of the 11 camps in your jurisdiction.

A. To be exact, I visited the commandants of the following nine concentration camps: Neuengamme, Oranienburg, Gross-Rosen, Auschwitz, Flossenburg, Buchenwald, Dachau, Mauthausen, and Bergen-Belsen. The other two, Stuffhof and Schirmeck, had been overrun by Allied Forces and I could not visit their commandants any longer.

Q. How many Jews did you find in the nine camps you visited?

A. I did not walk about and count the Jews there. The figure referred to was mentioned by Gluecks, who seemed to know about the figures better than anyone else. It seemed too small but that was the one that was mentioned as far as I recall.

Q. You just told us that you visited the nine camps. You certainly didn't go there and not find out how many Jews there were that were to be affected by this order. What did you find?

A. All I did was to deliver the order of Himmler.

Q. You just played postman, was that it?

A. Yes, that is true in this case. I played postman in that instance because that seemed very important to Himmler at the time, since Himmler was conducting certain negotiations with Count Bernadotte of Sweden and he wanted to have things fixed in that manner.

Q. He wanted a few Jews as pawns for bargaining purposes, wasn't that it?

A. Yes, that is true. That was my impression as well as Gluecks,—that he wanted to have them for bargaining purposes in the peace negotiations.

Excerpts from Testimony of Oswald Pohl, taken at Nurnberg, Germany, 8 June 1946, 1030-1230, by Lt. Col. Smith W. Brookhart, Jr., IGD. Also present: Dr. Joseph Maier, Interpreter; Charles J. Gallagher, Reporter.

Composition and Activities of "Himmler's Friends"

Q. You have mentioned dealings with Ohlendorf. Will you elaborate on what particulars you dealt with Ohlendorf, or had contact with him?

A. Whenever I met Ohlendorf it was only within that special circle of Friends of Himmler's. I never looked him up in an official capacity.

Q. What were the occasions when you met with Ohlendorf?

A. Every month the circle of Friends of Himmler's got together. There were about thirty persons present and Ohlendorf was among them. I say, these were the occasions on which I got together with him.

Q. Where were these meetings?

A. Usually in the House of Aviators in Berlin.

Q. When were these meetings? What time of the day, and how long would they last?

A. They usually started at 7:30 in the evening and would last until about ten or ten-thirty, when people began to go away.

Q. How large was the average attendance?

A. The average attendance was twenty persons. Sometimes thirty persons. I don't know all the people that belonged to that particular circle of Friends of Himmler's. I just saw the people that happened to be there.

Q. Did the same people attend every month?

A. That varied. At one meeting one fellow would not appear, and another fellow would appear at another meeting. That varied, and I was not there either every time.

Q. You mentioned before that economic and business leaders often attended these monthly dinners for the friends of Himmler's. Who, for instance?

A. The majority of the people who attended were economic and business leaders. Among them were Baron von Schroeder, Lindemann who I believe was the president of the German Economic Chamber, Emil Helfferich from Hamburg, Ritter von Halt, the successor of the Reichsport Leader Tschammer-Osten, Professor Meyer of the Dresdener Bank in Berlin, and Herr Flick, the noted central German industrialist.

Q. Were there other industrial or business leaders at these dinners whom you can now recall?

A. Dr. Binge, who was a representative of a large concern. I am not sure whether that was Siemens. Yes, I seem to recall that he was the Director General of Siemens. Then there was one Rosterig of Kastel—Harthein, but which firm he represented I don't know. One Herr Loscher, formerly of the Reich Finance Ministry, and subsequently a leader of an economic concern either subsidized or established by the Reich Government.

Q. Then you can think about those and give us other names later. Now as you talked to Ohlendorf what did you usually discuss?

A. It was usually the case that we of the SS would spread among the group, and talk to the other guests. We would not sit together, you see. Thus it happened that Ohlendorf and I did not talk very much to each other.

Q. Was this habit of spreading SS representatives among the other guests a prearranged matter?

A. Yes, it was. We were told not to sit together. The seating arrangement at the table was such that the SS was spread among the other guests. Himmler had his personal guests sit near him, and we were supposed to entertain them.

Q. What were you told to discuss with the guests?

A. We did not have any definite instructions as to what to talk to them about. We were simply asked to entertain them.

Q. Who among the SS approached these leaders for financial support?

A. The manager of this affair was Brigadefuehrer Kranefuss. He issued the invitations on behalf of the Reichsfuehrer SS Himmler, and even I received an invitation every time. He arranged the seating order around the table, and it was he who discussed all the internal matters with the economic leaders there. They were not restricted to these gatherings for their talks or discussions. That is, the economic leaders were not restricted to these social gatherings. These activities must have taken place outside as well.

Q. I am concerned with the manner in which these industrial and business leaders were approached for financial aid. What do you know about that?

A. I would not know anything about this. All of this was attended to by Kranefuss. How he did it I do not know.

Q. When did you learn about it, after the money came into the treasury of the SS?

A. I never received the money; that was received by the personal staff, that is Wolff.

Q. You mean to tell us you knew how the money was spent, and not where it came from?

A. I have no idea.

Q. Yes, you do.

A. I am telling you the truth. They never came through my hands. Everything was attended to by Obergruppenfuehrer Wolff, who had his own treasurer.

Q. You are not stupid, and you were well informed in these matters. You probably had a better insight of the SS organization's financial problems and its financial reserves than any other man.

A. That is true.

Q. Now tell us what were the amounts in a general way that were received from these industrial leaders, and what was done with them?

A. I must say under oath I do not know anything about the amount of money given by these industrial leaders. All I know is that Brigadefuehrer Kranefuss, and Obergruppenfuehrer Wolff, and Baron von Schroeder, that among these three men all things were discussed. One could observe from the whole discussion that developed between Kranefuss and Schroeder, that they were on very good terms with each other, and they settled these matters among each other.

Q. How much money was turned over to Hitler out of this fund?

A. I have no idea. I do not believe that Hitler received any money from these funds connected with the personnel administration of Obergruppenfuehrer Wolff, who did not permit anybody to take any look at it.

Excerpts from Testimony of Oswald Pohl, taken at Nurnberg, Germany, 10 June 1946, 1400-1700, by Lt. Col. Smith W. Brookhart, Jr., IGD. Also present: Richard Sonnenfeldt, Interpreter; Charles J. Gallagher, Reporter.

Disposition of Concentration Camp Inmates as Allied Armies Pushed into Germany

Q. Was there any special order given by Himmler to you as to the disposition of the inmates of concentration camps that were not as yet overrun by the Allied Armies?

A. In the Fall of 1944 Himmler gave a written order that in case a concentration camp was threatened by the approaching enemy, the particular concentration camp should come under the jurisdiction of the local Higher SS and Police Leader, and that then the Higher SS and Police Leader of that region should decide at his own discretion what disposition should be made of the inmates.

Q. And then what happened?

A. I do not know whether Himmler gave the directives to Kaltenbrunner beyond that.

Q. What was done under that order?

A. According to the provisions of this order the Higher SS and

Police Leader took all measures necessary in the evacuation of these camps, and for the treatment of the inmates.

Q. You mean they were to do that, didn't you?

A. They were to do that, and I give my opinion that they did it.

Q. How long did Himmler's order to this effect remain in force?

A. I never heard that it was rescinded. I remember that Gruppenfuehrer Katzmann evacuated his camps up in the north, and later Obergruppenfuehrer Schmauser evacuated Auschwitz, and Gross-Rosen. I remember particularly towards the end I still received teletypes from Martin, who was Higher SS and Police Leader of this region, what to do with the concentration camp in Flossenburg, and I was still in Berlin, I remember that.

Q. What did he do?

A. I do not know. I left Berlin shortly after that, and all further connections ceased.

Q. What did you tell him to do?

A. I told him that in accordance with the orders of Himmler, he himself would have to know what to do, because I in Berlin could not possibly judge what the conditions were down there.

Q. You say you do not recall any rescission of this Himmler order.

A. No.

Q. Is that what you want to swear to?

A. Yes, I swear to that. I never heard of Himmler either altering or rescinding this order.

Q. You know it was recalled at least twice, don't you?

A. No, I do not know that.

Q. How do you account for the order from Himmler to you for extermination of all prisoners in the concentration camps, which order you attempted to destroy, but failed to do so?

A. I do not remember any such order.

Q. You do not deny it existed?

A. Well, I do not remember having seen such an order.

Who Was Responsible for the Concentration Camps

Q. Let me read some of Kaltenbrunner's testimony. He was being questioned about the deaths that occurred in concentration camps, and this question was put: "Because they continued to be done through 1943, 1944, and 1945, and until the Allied Armies overran the concentration camps, and through those years Kaltenbrunner was Chief of the RSHA which had them in charge.

"*A.* No, I was never in charge of any such, but orders were generally like such in my statement in London, that Himmler or Pohl, and no commander of any concentration camp on the part of Germany can say he ever received the slightest order from me."

A. I can give you exactly the same answer. No concentration camp commandant ever received the slightest order from me, either written or oral. The WVHA* did not have the slightest jurisdiction over the prisoners. Any such order could only come from Himmler, or from the RSHA,** from Mueller, head of Amt IV. I do not know whether Kaltenbrunner knew about it in every case, but at any rate any such orders never emanated from the WVHA, or from me.

Q. You and Kaltenbrunner contradict each other at almost every turn.

A. Well, I am telling you the truth.

Q. Kaltenbrunner says that in all his dealings with you he never referred to concentration camps.

A. That is an error. I already testified to this fact, and I am insisting on it that I wrote quite a number of letters to Kaltenbrunner to release several prisoners and that cannot be changed. Those letters would be entirely surplusage if I myself ever had the power to take them out, because I would have simply to say, "Take them out."

Q. You stand on your oral testimony that when you wanted to deal with any one about taking a prisoner out of a camp, you took it up with Kaltenbrunner, is that right?

A. Yes, I insist on that absolutely, and I will not change it. The whole thing is so clear that any error is absolutely out of the question. Some of my collaborators, no doubt, would be in a position to testify whether or not I had authority to release prisoners. Loerner would know that, and Hoess perhaps.

Q. Here you make out Kaltenbrunner as a liar when he is on trial for his life when he gave this testimony?

A. It is not true insofar as he refers to me. That is absolutely not true.

Q. Kaltenbrunner says if he can be confronted by you he will say that you are the responsible person always.

A. Please confront me with him.

Q. In connection with the Jewish extermination program Kaltenbrunner said this: "During my time"—meaning his time with the RSHA—"I have repeatedly opposed such persecution of the Jews; particularly in view of those reasons I have declined to take charge of this office." What do you know about that? He said further, "The responsibility rests with Himmler, Mueller, and Pohl."

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*Economic and Administration Main Office (of SS), in charge of concentration camps and headed by Pohl.

**Reich Security Main Office, headed by Kaltenbrunner.

A. In this Kaltenbrunner makes only one mistake. He put in the name of Pohl instead of Kaltenbrunner, and I will tell you why. If I oppose anything, that means that I have something to do with it; how can I possibly oppose something I did not have anything to do with?

Confiscation of Czech Property after Conquest of Czechoslovakia

Q. Do you recall the Central Office for Settlement of Jewish questions in Bohemia and Moravia that was established at Prague?

A. Yes, the RSHA had an agency there.

Q. What did you have to do with it?

A. I had nothing to do with the Central Office.

Q. Kaltenbrunner said the following: First, that it had been instituted by Heydrich, and then he was asked about the period that Kaltenbrunner was in the RSHA, and he answered by saying: "During this period, no instruction or orders came from this office which I personally have issued. Such instructions or orders could only be issued by Pohl, or from the Chief of the Secret State Police, Mueller."

A. Well, that is complete nonsense. I remember this whole thing now, and I will tell you why in just a second. Heydrich did institute that Central Office there and in the course of time accumulated so many valuables, and such enormous funds that the Reich Ministry of Finance suddenly became interested in it, and sent accountants down there to check the accounts. That is all I know about it, and so far as giving orders to them, that is complete nonsense. My deputy, Obergruppenfuehrer August Frank, who was in charge of all of the accountants, certainly would know about this, because I believe he will remember, too.

Q. Again your story does not agree with Kaltenbrunner's. He said this, speaking of the office there, "I only knew that there was such an institute to take care of the property, because the Ministry of Finance had asked for control of this institute, and I had referred them to Pohl because Pohl was in charge of that institute. I have not reported to Pohl but I have requested the Minister of Finance to refer himself to Pohl." And further, "These control duties were passed on to Pohl. In other words, the Ministry of Finance was asked to refer to Pohl because this institute to take care of the properties was under the directorship of Pohl."

A. Well, all I can say is that Kaltenbrunner's orientation about his own activity is fantastic and poor. I just mentioned to you that the Reich Ministry of Finance got the facts about this thing, and they sent accountants to check the accounts, and apart from this, that institute was entirely Heydrich's and possibly Kaltenbrunner's.

Q. What happened to these properties and valuables?

A. As I said, the Reich Ministry of Finance took over and when they did they also had the right to dispose of this thing. I do not know what happened to them, but as I told him, this thing was much talked about among the accountants in my main office, and the whole thing was rather ominous, but that is the only connection I had with it. I do not know just what value there was in all the things claimed. I believe most of it was in exchange, currency, and other valuable papers, but I know it was many millions. Possibly I may be able to remember more detail about this thing later, and if I may, I would like to add it to my testimony then. As I told you, this Obergruppenfuehrer Frank was connected with this whole thing, and he could be able to give you more detailed information.

Q. In order to refresh your recollection you may recall that more than 17,000 houses were confiscated and among other things, livestock, and liquid funds from the banks and, much other property, which I shall ask you about later.

A. All of that is very possible, as I say. They had both real estate, valuables, and currency. So far as I know money and other valuable papers exceeded the value of real estate by far, but it must have been thousands of houses, and I know that they had two warehouses in Prague that were filled with furniture, and other household goods. So far as I remember recreation homes for German soldiers were furnished with them. This whole thing was much discussed in Berlin; so much, in fact, that it finally got around to the Reich Ministry of Finance, and their accountants.

Excerpts from Testimony of Oswald Pohl, taken at Nurnberg, Germany, 13 June 1946, 1400-1600, by Lt. Col. Smith W. Brookhart, Jr., IGD. Also present: Richard W. Sonnenfeldt, Interpreter; Rose W. Cook, Reporter.

Widespread Knowledge of Conditions in Concentration Camps

Q. Kaltenbrunner has told the Tribunal that there were only a handful of people in the WVHA who had any control and knew anything about concentration camps. These are his exact words as they appear at page 7617 of the English transcript of the trial:

"*A.* There were just a few people in the WVHA who knew how things really were in concentration camps.

"*Q.* Now as far as my question is concerned, you were speaking about a handful of men who did not belong to this group?

"*A.* No, I did not. This handful was Himmler, Pohl, Gluecks, and Mueller and the camp commanders."

A. Well, that is complete nonsense. I described to you how these were handled in the WHVA. As for instance, in the case of the use of textiles and turning-in of valuables, from Gluecks and Loerner right on down to the last little clerk they all must have known what went on in the concentration camps, and it is complete nonsense for him to speak of just a handful of men; and if it was like that in my department, naturally, it was exactly the same in his. Just to illustrate to you what I mean, when I went around to the different camps in March as the representative of Himmler, I came to Bergen-Belsen and found terrible conditions there. An epidemic of typhus had broken out, and there were mountains of dead people all over the camp, and I tried to institute emergency measures in order to stop the epidemic, and although I really couldn't do that, I told the Camp Commandant, "Don't let anybody else come into this camp." Then there were seven or eight thousand Jews there, and I wanted them to be sent to Theresienstadt to get them out of there, and I dispatched a telegram at once to the RSHA, asking them to have these Jews transferred. Later when I got to Berlin I got on the telephone and I remember I called there three or four times every day, and I don't remember any more whether it was Mueller or Eichmann that I talked to in order to have these people moved. That really shows that I, for instance, had no authority to move people and that this was a matter for the RSHA. Now these things happened and they are facts and there is no use to deny them or lie about them. They just are there and there is nothing you can do about that.

Q. All right, why didn't you tell us about this before when I asked you what conditions you found when you were making your trips in early March, and when you denied finding any such conditions? I asked you about nine camps you told us you visited, and you said you didn't observe anything. What did you see at the other camps, dead people also?

A. Well it is not that I tried to hide this from you, but I didn't think you asked me about it. Well, in Bergen-Belsen, you couldn't help noticing it, it was very evident, and if I didn't tell you about it, it is because I thought you didn't ask me about it, or maybe I didn't understand it. I have no interest in not telling you everything I know. It may be I forgot it for the moment, but I will gladly admit it. The only other things I remember about this trip were in Mauthausen. When I arrived there, I saw many sick people there and many of them limping around and I asked Ziereis what medical facilities he had in the camp because these people were not very well cared for.

Number of Concentration Camp Inmates Available as Laborers

Q. Let's turn now to the figure you gave us previously as to the number of inmates of concentration camps who were available and capable of being used as laborers. You have estimated that some two hundred to two hundred fifty thousand were used by the armament industry?

A. Yes, this figure is not complete by any means because it refers only to those that were loaned out to the armament industry but does not refer to those who were used in our own armament factories. This number of two hundred to two hundred fifty thousand refers only to those who were used for purposes of armament in the labor camps and in the "Aussenlager," which were run exclusively for labor purposes, and does not include those who may have been used for the same purpose inside of the concentration camps where industries may have had their own small establishments.

Q. How many were there in this latter group?

A. Perhaps it will be easier if I do it another way. The next thing I would like to talk about are construction brigades. In all construction brigades and armament projects inside the concentration camps a further maximum number of one hundred thousand were used, so that I would be inclined to believe that the total was somewhere around 250,000, but not more than that number.

Q. How were the others out of the total of 470 thousand, which would make 120,000, employed?

A. The remainder of 120,000 I cannot specify in exact percentages, but I believe that it would be a fair assumption to make that roughly 40,000 of them were used for the upkeep of the camps, and for necessary work inside the camps to keep them running. A further 40,000 of them probably were in quarantine at any one time and at least 40,000 of them upon the sick list at any one time, and probably the number of the people on the sick list was higher than that but I can only give you this approximation.

XXIII. HERMANN REINECKE*

Excerpts from Testimony of Hermann Reinecke, taken at Nurnberg, Germany, 23 October 1945, 1045-1235, by Col. John H. Amen, IGD. Also present: Lt. Daniel F. Margolies; General Erwin Lahousen (German P/W); Richard W. Sonnenfeldt, Interpreter; Anne Daniels, Court Reporter.

Branding and Other Inhumane Treatment of Russian Prisoners of War

BY LT. MARGOLIES:

Q. I have here document R-94. The order deals with the marking of Russian prisoners of war.**

A. Yes. (The witness examined the document.) I know this order, and, as I said yesterday, it deals with tattooing. It was issued by General Graevenitz at the time, and as soon as we learned about it, it was recalled.

Q. Who is the order signed by?

A. It is signed by the Chief of the Prisoner of War Department, General Graevenitz.

Q. On the order it states—

A. (Interposing) It was always signed "By Order of the Chief of the Supreme Command of the Wehrmacht."

I know this exactly. Graevenitz issued this in July of 1942, and either the Chief of the Department, the Chief of the Section, or the Chief of the Prisoner of War Department would sign it.

He personally had to recall this order; he had to issue another order to cancel this one.

Q. When an order is signed by the Chief of the OKW, does he know about the order before it is issued?

A. Normally, an order that was signed by order of the Chief of the OKW—such an order would have to be previously approved and concurred in by the Chief of the OKW. However, I remember exactly that this order here was issued without either his or my approval, and thus it had to be recalled later.

I don't know any more exactly; you would have to ask Graevenitz about it. I believe that this order was issued after a general directive had been issued by Keitel that prisoners of war would have to be marked in some way.

Q. Well, do you remember when the order was recalled?

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*Herman Reinecke was a General of Infantry (Lt. Gen.); Chief of the General Office of OKW; Chief of the NS Political Guidance Staff, OKW; Honorary member of the Special Senate of the People's Tribunal. Reinecke was known as one of the most Nazified of the General generals. In August 1944 he was one of the judges in the trial of participants in the 20 July 1944 attempt on Hitler's life.

**Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

A. Yes; I know that exactly because all of us insisted on that as soon as we heard about it. I can swear to that.

Q. Well, do you remember discussing this order with Field Marshal Keitel?

A. If I remember correctly, a general order was given by Keitel that they would have to be marked or identified in some way, and that, of course, was because of the many escapes that took place. Those people would get away from the camps and then put on civilian clothes, and it would be impossible to identify them.

I think this suggestion was made at the instigation of the police. I believe that this is the order that resulted. (Referring to the document)—Yes, that is it.

BY COLONEL AMEN:

Q. Your recollection has been refreshed about the meeting with Lahousen?

A. Yes. I was very much moved and very much stirred yesterday that some of my answers were doubted. I can only repeat again that I had nine departments under me, and one can't remember all these things after four years.

Q. Well, you can certainly remember that there were many conferences concerning the orders for the mistreatment of Russian prisoners of war.

A. Of course, most of those conferences or discussions took place with the Prisoner of War Department.

Q. No, but you personally attended many conferences where those orders were discussed?

A. Of course, that is difficult to say, but it is possible.

Q. Well, I will refresh your recollection about it, I think, in a very little while. Meanwhile, here is document 1519-PS.* I ask you to read it and see if that helps to refresh your recollection on any of these points. (The document was submitted to the witness.)

A. Of September 1941? Oh, yes. This, then, must have been of consequence. I mean, the meeting must have taken place shortly before this. I guess that must have been in connection with the trip that I took to the front in August of that year. I noted all those things, and then I must have said, "Now listen, we can't work things like that," because the commandants of the camps were complaining.

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*Circular regarding treatment of Soviet Prisoners of War. See Vol. IV, p. 58.

Q. What were the commandants of the camps complaining about?

A. Well, just about this. Those were camps that were under the authority of the Army; they were not under us. I didn't have any camps there. They complained about the attitude of the Police, and they wanted the same thing that we wanted, namely, they wanted to have all these things done outside the camps.

Q. Who is "they"?

A. By "they" I mean the commandants of the camps, and of course us too. If I remember correctly, in August we had not received any Russian prisoners of war in the home area.

Q. Where were they?

A. They were all with the Army, and that is where the orders were sent. I believe the order that I was shown yesterday had the initials of Warlimont on it and I believe it was sent to the Army.

Q. So what?

A. What I mean to say about that is that those orders were sent from the Leadership Staff of the Armed Forces to the Army, and then we only saw it much later. Otherwise, we would have issued this order of the 8th of September 1941 very much earlier.

Q. Well, the first order was issued on 16 June, was it not?

A. But not about this subject, I don't believe. There is one mention here of the 26th of June 1941 and—oh yes, there is one up here of the 16th of June addressed to the Commander of the District. Only Breier could answer this. I was in the sanatorium at Dresden at that time, and therefore it is impossible for me to answer these questions.

This is also an order that was issued without my collaboration, because otherwise it would have to say "AWA" [General Office of the Armed Forces].

Q. That is a lot of nonsense. Now, do you remember document number 502-PS* which had to do with the killing of the prisoners outside of the camp? Do you remember that order?

A. You mean an order from us?

Q. Never mind who it was from. I said do you remember the order that I showed you yesterday, dated 17 July 1941, about killing prisoners outside of the camp? This order right here. (The document was submitted to the witness.)

A. You mean what I saw yesterday?

Q. I say do you remember it, yes or no?

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*Vol. III, p. 422.

A. I don't remember it; it was not issued by us.

Q. That isn't true either. Read the first line. Read it out loud. (Whereupon the witness read as instructed.) Doesn't that say that the activation of commandos will take place in accordance with the agreement of the Chief of the Security Police and Security Service, and the Supreme Command of the Armed Forces?

A. Yes, that is possible; yes.

Q. Is that what it says, "possible"? That is what it says, isn't it? Read it again.

A. Yes, of course.

Q. Then don't sit there and tell me that the OKW didn't have anything to do with it.

A. I didn't say that. I said that I myself didn't have anything to do with it.

Q. Of course you yourself did. What position did you occupy at that time?

A. I was always Chief of the General Office of the Armed Forces.

Q. Yes, don't tell me you didn't have anything to do with it.

A. Well, as far as this agreement is concerned, it is possible—well, maybe Colonel Breier made it. That is possible, he was competent. Or perhaps the Abwehr, they were also competent in these matters. However, we all protested.

Q. Don't you know that you are responsible for everything which they did?

A. Of course, yes.

Q. Well then, why do you keep sitting there telling me that you didn't have anything to do with that?

A. I don't say that. All that I say that I can remember today is that this agreement with the Police was made by the OKW or my department.

Q. Do you remember taking 160 officers down to Dachau at Hitler's request?

A. Oh yes. You mean German officers?

Q. Yes.

A. Yes.

Q. And that was when?

A. Well, that was in the nature of a course, and it must have been in the spring of 1939, or just about at that time.

Q. And how did you come to make that trip?

A. That was a course, and I believe that it was a course which took place in Munich. The regimental commanders of the Army, the commandants of the large ships of the Navy, and the commandants of the Air Force were sent there for a course.

Well, I put in a day there because at that time there were already rumors among the German people that everything was not all right in the concentration camps, and I made the suggestion to Keitel to ask Himmler to let us see one of those camps. He then arranged this trip to Dachau, which he conducted personally.

Q. Who conducted personally?

A. Himmler.

Q. Was Hitler there?

A. No. And then, after that, in the afternoon, we inspected a china factory which belonged to the camp. Then later we saw an SS regiment in Munich performing combat exercises.

Q. How were the 160 officers selected?

A. The different branches of the armed forces selected them for this detail.

Q. Were they General Staff officers?

A. No; everything was mixed up. They were with the troops, and as far as I remember the Army sent regimental commanders.

Q. And then after the inspection you made a speech, didn't you?

A. Well, I believe that I made one in the evening, in the dining room.

Q. And what did you say?

A. Well, this is very difficult. I really don't know any more what I said. He spoke as our host, and I believe I then replied.

Q. And did you state that the results of the inspection were good or bad?

A. It was good, and we all were very much astonished that it was so good.

Q. And that is not true either, according to all of the officers who were there that we have been able to locate.

A. Well, I can only remember that we found it in such shape that all of us were astonished.

Q. Why were you astonished?

A. Because there was a general rumor among the people that these concentration camps were terrible. That was the reason why we went there; that is, to look at it ourselves.

Q. Did you see any gas chambers there?

A. No; no.

Q. You found everything was fine; is that right?

A. Well, I remember everything we saw was all right anyway. I remember that we started out by seeing a relief map of the whole thing, and then we started out to visit the barracks. Everything was nice and clean, and also the prisoners.

Q. And that is what you said in your speech afterwards?

A. That it was good?

Q. Yes.

A. Yes.

Q. Is that what you said in the speech?

A. Yes; we were content at that time.

Q. And that is what you said in the speech?

A. It is possible.

Q. Anything is possible. Is that what you want to swear to? Is that what you said in your speech?

A. I remember that he was our host and we were all together in the officers' quarters. He greeted us, and then I got up and answered him. I really can't remember what I said, but I do know that we found that those rumors that were going around among the German people were not true.

Q. You understand that you are still under oath?

A. Yes. I remember that I praised very much the exercises of that SS regiment that we watched. They were actually shooting with live ammunition.

Q. I am not at all interested in that.

A. Well, of course, it is terribly difficult to say today what I said in a speech then. I can't do that.

Q. Well, lots of other people can. I don't know why you shouldn't. What do you want to swear to about what you said?

A. As far as I remember, I thanked him because he had conducted us around and shown us all those things.

Q. All what things?

A. That we had seen the camp and this manufacturing of china in Allach.

Q. Never mind the china; I am only interested in the camp.

A. But I am certain that I did not talk about details.

Q. Conditions in the camp? Do you want to swear that you said that you found those conditions to be good?

A. It is terribly difficult to say now what I said then. The only thing that I can remember is that we were very astonished how good everything was and that it was in order.

(Erwin Lahousen* entered the Interrogation Room at this point.)

Q. Are you acquainted with this gentleman who has just come in?

A. Yes; I remember that this must be Lahousen—Colonel Lahousen, yes.

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*Maj. Gen. Erwin Lahousen, who had served as an assistant to Admiral Canaris in the Abwehr (Intelligence Service), was one of several Abwehr officers who opposed the Nazi designs. At the trial he testified for the prosecution. See Affidavit A, vol. VIII, p. 587.

Q. I will ask him to see if he can't help to refresh your memory about this conference which took place, at which you were both present, and at which the Russian prisoner of war situation was discussed.

A. Yes.

General Lahousen: Reinecke, we are concerned here with the conference which, according to my memory—and as I also stated here—took place very shortly after the beginning of the Russian campaign. You were presiding over it. According to my memory, the following men were present: Outside of myself there was Obergruppenfuehrer Mueller of the Reich Security Main Office; the representative of that section, or rather, of the Prisoner of War Department—I can't remember his name any more, but it was not General Graevenitz.

Colonel Amen: Colonel Breier?

General Lahousen: Right. And perhaps there were one or two more officers, whom I can't remember. The subject of the conference was the command concerning the order as to the treatment of Russian prisoners of war. That is, as far as I remember it.

General Reinecke: Yes.

General Lahousen: In this conference you explained and also gave the reasons for the measures which had led to the extremely harsh treatment of this question. At that time I heard, by order of my department and my superior, Admiral Canaris—I had to present the misgivings and reservations which the office had against this decree, or rather, against the orders, which were in contradiction to all international customs.* I don't mean agreement, because there was no agreement with Russia on that subject.

As far as I remember, these reservations or this protest had the following contents in the main:

First, the repercussions of these measures upon the morale of the troops, which were especially and most unfavorably influenced because it happened that those executions were carried out within sight of the troops.

Second, the unfavorable effects as far as the CIC Service was concerned. That was because these measures violated the most elementary confidence as far as the ranks of the prisoners of war were concerned, and that was especially so for certain Russian peoples as, for instance, the Caucasians. They were horrified and put out by this.

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*See documents 1519–PS, vol. IV, p. 58; EC–338, vol. VII, p. 411.

Third, I pointed out the lunacy of the execution of these orders or these methods, and I put this question. This question, in the main, was addressed to Obergruppenfuehrer Mueller, according to what opinions and what points these executions were being carried out. That was because it was reported to me that, for instance, prisoners who came from the Crimea, who were Tartars, who had been circumcised because they were Mohammedans, had been killed by the SD commanders, who were competent in these things. That was because they had been regarded as Jews; that is, they had been killed because they had been regarded as Jews.

The fourth point is that because of these methods all desertions or inclination towards desertion had been destroyed.

Lastly, thus the will of resistance of the members of the Red Army itself had only been increased and therefore the opposite effect had been achieved of what had apparently been intended, namely, that by the extermination of certain elements regarded as the promulgators of Bolshevism, it would kill Bolshevism.

In the discussion which started about this, Mueller told me he only granted that the executions were not to take place within sight of the troops, but out of their sight. He made this compromise in a certain cynical manner. Furthermore, he granted a certain and more defined limitation as far as the term "contaminated by Bolshevism" was concerned. That is, a new limitation on that term should be imposed. Outside of that, or as far as the further course of the discussion was concerned, Mueller addressed himself very sharply against any relaxation of this order. He declared that we were in a war of life and death with Bolshevism, and that the soldier of the Red Army was not to be regarded as a soldier like the soldiers of the Allies, but as an ideological enemy to the death, and should be treated accordingly.

You, Mr. Reinecke, agreed with this opinion of Obergruppenfuehrer Mueller in the main, in your conclusions, and you again described this whole problem which I recalled to you in very hot words when we left the conference; that is, after the session had broken up, I mentioned the negative result as far as my protest was concerned, and I regretted it very much. I mentioned this to Colonel Breier—the Colonel Breier that you mentioned. He only shrugged his shoulders and said, "What do you want to do? You know Reinecke very well."

What I pictured here from my memory is, moreover, contained in a document which I had made for the orientation of my chief, Admiral Canaris. I made this notation at once, and thus everything is documented. The document is in a collection which I have called my collection of rarities. I have marked many of my papers thus.

That is all.

To General Reinecke by Col. Amen:

Q. Now, do you remember the conference?

A. Yes, it must have happened something like that.

Q. Well now, don't say "it must have happened something like that." Did it happen like that or didn't it?

A. It is very difficult for me to remember particulars, but if General Lahousen has made a notation in a document about it—

General Lahousen: Yes.

A. —then it must have happened just as he set forth.

Q. Do you deny anything which Lahousen has just said? Answer yes or no.

A. The only thing that I can imagine—because of my own position I can't imagine that I could have taken such a radical point of view. I must have received an order from Keitel as to that.

Q. Do you deny anything which Lahousen has just said?

A. I can't deny it because if he noted it down at that time—I have nothing in writing that I can remember about that.

Q. Do you deny anything which Lahousen said? And if so, what?

A. I say again that if he made those notations then they must be right. However, I cannot remember that I myself took such a radical position.

Q. But you don't denv anything that Lahousen said or wrote in his book? Is that correct?

A. None other than my own radical opinion. I don't know, but I must have said they were not my orders at the time; they must have been there and have come from the Leadership Staff of the Armed Forces.

Q. I don't care whose orders they were, at the moment. I am asking you whether you deny anything that Lahousen said, and if so, what?

A. I can only say that I cannot agree that I should have manifested such a radical attitude as to those things personally.

Q. What part of it do you deny, if any?

A. I personally—and I believe General Lahousen mentioned that I had supported Obergruppenfuehrer Mueller's point of view very strongly.

General Lahousen: Yes.

Q. Right. Now, do you deny that or do you admit it?

A. As I said before, it is clear that the thing happened later, that the order was issued like that. The sentence here, that the officers of the CIC were to participate in it, proves that.

Q. There was never an occasion when you opposed anything that Obergruppenfuehrer Mueller said; isn't that a fact? Never?

A. That I really don't know.

Q. Well, can you remember any time when you ever opposed anything that Mueller said?

A. I can only say again that all of us were very distressed about this thing and how it was working out. However, it was ordered and thus it had to be carried out.

Q. You weren't distressed about it.

A. Yes.

Q. What did you do about it?

A. I couldn't do anything against it.

Q. You didn't try to do anything, did you? You have just heard Lahousen say what you did about it, which was to support Mueller.

A. If two different departments did not agree, then the normal thing would have been that Admiral Canaris, as the representative of his office, would have gone to Keitel and told him, "It doesn't work out like that." And then Keitel would have settled the difficulty.

Q. Now we will ask Lahousen about that.

General Lahousen: I want to make a statement here. That is just what happened. Admiral Canaris had been to see Keitel to make representations about just what had happened; that is, about the contents of these orders: (a) as far as international law was concerned—that is, about the customs of international law; and (b) about the lunacy of this order. He made very strong representations about that.

I received directives from Canaris before I went to this conference. The purpose of that was to provide you, Mr. Reinecke, with a golden bridge, so to speak. I was to give you all the facts upon which to build, and I was going to give you all the material support possible. Instead of taking this opportunity, you relied upon Mueller.

General Reinecke: Well, the way I look at it, I must have already received Keitel's opinion, because I can't imagine anything else.

General Lahousen: Your personal position was very harsh, in particular; it came out in the expressions which were used at the time and which I don't remember exactly any more, and therefore I can't repeat them. However, they are in that notation that I made in the document; that is, your personal expressions about these questions.

To General Reinecke by Col. Amen:

Q. Do you deny anything which Lahousen says?

A. It is difficult to deny it.

Q. I don't care whether it is easy or difficult; do you or don't you?

A. If he remembers those things, then it must have been like that.

General Lahousen: I can only tell the truth as to just how it happened.

A. If he put it down in a document—at any rate, I can't remember it.

Q. Then you don't dispute it; is that right?

A. Well, if he noted it down like that, then what can I—well, I remembered it differently.

Q. Do you dispute it or don't you?

(Witness shrugs shoulders.)

Don't just shrug your shoulders; do you dispute it or don't you?

A. If he says it happened like that and he noted it down on paper, then it must be correct. I myself could not fix it as positively as all that.

Q. But you don't dispute it?

A. No.

To General Lahousen by Col. Amen:

Q. Now, I want to ask Lahousen if it isn't a fact that these orders for the treatment of Russian prisoners of war were the subject of constant discussion in the General Staff?

A. I believe yes. I don't happen to know of any concrete instances, but I must suppose that this subject—which had created a terrific reaction within the armed forces—was discussed many times at various places.

Q. And is there any question but what the reaction was a very strong one?

A. No. I know that the reaction was especially strong from the front; that is, especially the commanders and those in a position of command at the front.

I have already stated in my first interrogations that several of these commanders refused to transmit these orders any further, but I am sorry that I cannot name them. I remember very well that Canaris undertook a trip at once, or at least a very short time after this order had been issued, to see the Supreme Commanders and to ascertain their opinions as to this order. Then Canaris told me about this, and that is where I derived the foundation for what I just told you.

Q. Now, what was Reinecke's position at the time of this conference?

A. He was the Chief of the General Office of the Armed Forces.

Q. And what was his responsibility at that time insofar as the prisoners of war were concerned?

A. I can't say that positively, but I can only deduce something from the presence of Colonel Breier, who belonged to your Department.

General Reinecke: Yes, he did.

A. And from the fact that you presided over this conference, I had to conclude thus, that you were concerned very much with this question—that is, the responsibility—without being able to say concretely just how the organization was at that time.

Q. Well, how did Reinecke happen to be at the conference, so far as you know?

A. He was presiding over it, and I even believe that he called it. He called it in order to comment on and explain these orders.

Q. So that if he suggests that he did not know anything about these orders first-hand, that does not conform with the facts as they appeared at the conference?

A. That is absolutely out of the question.

To General Reinecke by Col. Amen:

Q. Do you agree with that?

A. No, I don't agree. Perhaps I may explain this again clearly. As I said before, as far as I remember, when I came back from the front I called this conference. All these orders for the treatment of the Russian prisoners were not given by me, but they all came from the Leadership Staff of the Armed Forces without my participation.

This also appears in this order—and this was after we had issued the outlines. It says here: "The outlines given by the OKW for the occupied areas." That proves quite clearly that the original order came from Keitel and the Fuehrer, and was signed by Warlimont to the General Staff of the Army, because all the camps were under their jurisdiction and the measures had to be taken there. Then gradually, after the prisoners of war came under our jurisdiction, we were forced to take a certain position on that problem.

To General Lahousen by Col. Amen:

Q. What do you say about that?

A. I can only say that this order, as soon as it appeared, quite independent of the official conferences that took place about that—

General Reinecke: May I ask you again, what order?

A. The order went out for the first time that the Russian prisoners of war were not to be regarded according to the points of international law, but entirely new, cruel, and brutal methods were to be applied to them. You know that this order was discussed everywhere, in the offices, in the quarters, and everywhere, and also the reaction against this order. Therefore, I can't imagine that anyone in the position where I was, for instance, as a chief of a section, much less some one superior to me in the organization of the office, could not know about this order or its principal contents. I think it is impossible that you don't know about it.

To General Reinecke by Col. Amen:

Q. Now, you did know all about that order at the time, didn't you?

A. No. I want to say this again. I knew that the functionaries were to be shot.

Q. Well, everybody knew that.

A. I never denied that.

Q. I knew that myself.

A. Yes, that is clear. I never received the original order, or the particulars about that.

Q. Who cares whether you saw the original order or not?

A. At any rate, I did not work it out, I did not participate in it, and I did not make any suggestions in the formulation of this order. I was only involved by this trip that I took to the front.

Q. You did nothing to oppose it; right?

A. You mean against this order?

Q. Yes, or any of the orders with regard to the treatment of Russian prisoners of war.

A. It is impossible for me to say. Afterwards the order—well, of course, we constantly worked against that.

Q. But you never accomplished anything?

A. No. That is quite clear; it was ordered and what could we do?

Q. And therefore the responsibility of it was yours?

A. You mean for these orders when they came out?

Q. Yes. Now, have you recollected about the order for the branding of Russian prisoners of war?*

A. You mean the one that was shown to me a little while ago?

Q. Yes.

A. I did not give this order. General Graevenitz gave that order, and as soon as we learned about it, why it was recalled at once.

Q. That doesn't correspond with the facts either.

A. Well, that is certainly so.

Q. No, it isn't so. I show you a photostatic copy of an order dated 20 July 1942, and ask you if you can identify that as an official order. (The document was submitted to the witness.)**

A. Yes. I have already read this; I read it before.

Q. What is the date of it?

A. The 20th of July. It is quite clear that it was not issued by me, but by the Chief of the Prisoner of War Department; and it does not say "AWA" up here.

Q. I don't care whether you issued it or not. I didn't ask you anything about that. It is your responsibility, whether you issued it or not. What I want to know is, what date did you claim that that order was withdrawn?

A. That I don't know any more. Just as soon as we learned about this order—

Q. I am sure you don't know it any more, and you never did know it.

A. Yes, I knew it, because we ourselves put it into effect.

Q. I know you put it into effect, but you didn't get it withdrawn.

A. Yes, it was recalled, and as far as I know it was never carried out.

Q. That isn't true.

A. As far as I know, it never was applied.

Q. Are you trying to say that you personally withdrew it?

A. As far as I know and as far as I remember I gave the order to Graevenitz to recall it, and that was with the consent of Keitel. That is, after we had learned that Graevenitz had issued such an order.

Q. Why would you give an order to withdraw an order which you say you had nothing to do with?

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*See second footnote, p. 1606 of this volume.

**Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

A. I didn't say I had nothing to do with it; I merely said I didn't sign it.

Q. You said you caused it to be withdrawn.

A. Yes, I said that.

Q. I say, why would you cause to be withdrawn an order which you had nothing to do with issuing?

A. Graevenitz was my subordinate.

Q. Sure.

A. Well, as far as my powers of command were concerned, I had to do this.

Q. Well, then, you knew all about the issuance of this order.

A. As soon as we learned about it, we had it recalled at once.

Q. How did you find out about it?

A. That I don't know any more today, but it is very probable that somebody told me about it.

Q. I don't care what is probable; if you don't know it, don't try to tell me about it.

Now, did Speer tell you that he wanted you to stop killing off so many Russian prisoners of war so that he would have more to do work?

A. That was discussed yesterday, but as far as I know Speer was not even the Minister for Armaments at that time.

Q. Well, you saw the reference to Speer in the order which I showed you yesterday, didn't you?

A. Yes.

Q. What do you think it was there for?

A. As far as I know, he always received copies so that he could commit labor.

Q. So he could do what?

A. For labor commitments.

Q. Did you have any personal conversations with Speer with regard to Russian prisoners of war?

A. Oh God, that is very difficult to say. I talked to Speer so many times.

Q. And if Speer says he discussed that whole problem with you, would you say he was not telling the truth?

A. I discussed this problem with many people, and it may well be that I discussed it with Speer.

Q. Then you don't deny having discussed it with Speer?

A. It is possible.

Q. Anything is possible. I say do you deny it or do you admit it?

A. Well, what I mean to say is that we discussed these things with so many people because we were so much involved in them that it is difficult to say whether or not I discussed them with Speer.

Q. I am glad to hear you say you were involved in them.

XXIV. WALTER SCHELLENBERG*

Excerpts from Testimony of Walter Schellenberg, taken at Nurnberg, Germany, 13 November 1945, 1030-1215, by Lt. Col. Smith W. Brookhart, Jr., IGD. Also present: Gladys Picklesimer, Reporter; John Albert, Interpreter.

Negotiations for Evacuation of Jews in Return for Asylum for High Nazis

Q. Did you have some other note that you wish to refer to?

A. I thought the situation of the concentration camps over, and I would like to add that during the final period, meaning from September 1944 on, since Kaltenbrunner was living near to Hitler, that he could take responsibility for the treatment given in the concentration camps.

Q. When you use the term "living near to Hitler," just what do you mean?

A. It was the time he appeared daily for reports at the Reich Chancellery.

Q. Do you mean that they also were quartered near each other or only met on official matters?

A. He did not actually live there, but he would stay from 3:00 or 4:00 p.m., till late at night and also up to 4:00 a.m.

Q. Do you know that of your own knowledge?

A. Yes.

Q. Were you ever present at such meetings?

A. No. I would only occasionally accompany him to the Reich Chancellery, and two or three times I would make reports to him there.

Q. But you know it to be a fact that Kaltenbrunner and Hitler stayed late together at night?

A. Yes.

Q. And it is your own deduction that whatever actions Hitler recommended for the concentration camps in these later months Kaltenbrunner must have been informed?

A. I have one concrete example.

Q. Will you state it?

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*Walter Schellenberg was Chief of Amt VI (Foreign Political Intelligence Service) and Amt Mil (Military Bureau) of the RSHA, with the rank of Brigadefuehrer (Brig. Gen.). He also held the title of General of Police and Waffen SS. See Affidavit D, vol. VIII, p. 622.

A. On the 10th of April 1945 when a certain Mr. Musy visited me in Berlin, he told me that the concentration camp Buchenwald had actually been evacuated, which was contrary to assurances given him by Himmler. Thereupon I phoned on the one hand Himmler, and on the other hand I discussed this matter at lunch with Kaltenbrunner. Kaltenbrunner stated, however, that this was done on a directive of Hitler, and that this camp had to be evacuated on his order, and Group Leader Mueller added "You, Kaltenbrunner, told me already three or four days earlier that I should evacuate the Jews from this camp to the south." Then Kaltenbrunner said, "Yes, yes, that's correct. Besides, there is a general directive of Hitler to the effect that all camps should be evacuated, and that especially Jews should be regarded as hostages and be brought to the south." Then he said, turning towards me, "There are still enough people remaining in the camp so that you can console Mr. Musy with that."

Q. Musy was the former President of Switzerland?

A. No. He was the son of the former President of Switzerland.

Q. And his mission was to have as many Jews evacuated to Switzerland as possible?

A. Yes.

Q. And what had been the arrangement or agreement that Himmler was interested in?

A. Himmler first gave the assurance that in February 1,200 Jews would be sent to Switzerland by train, and that from then on every two weeks another train should be sent to Switzerland.

I had to organize the whole thing, but suddenly a stop occurred, and we were threatened with the death penalty for every Jew who crossed the Reich frontier, and this was done on the basis of an order by Hitler.

This order was given after a code message of the deGaulle office in Spain to an office in Paris was intercepted and decoded, which said that Mr. Musy and a representative of Himmler were in negotiations with a Jewish organization for the purpose of evacuating all Jews living in Germany, and that the price for it, so to speak, would be the right of asylum for about 250 Nazi leaders.

Himmler furthermore gave the assurance to Mr. Musy, after Hitler had forbidden further transfers of Jews, that no concentration camp would be evacuated, and Musy was instructed by Himmler to inform the Allied Western Powers officially of this second agreement. And with this official instruction Mr. Musy left Berlin on April 7.

Excerpts from Testimony of Walter Schellenberg, taken at Nurnberg, Germany, 13 November 1945, 1445-1710, by Lt. Col. Smith W. Brookhart, Jr., IGD. Also present: George A. Sakheim, Interpreter; S/Sgt. William A. Weigel, Reporter.

Use of Russian P/W's Behind the Russian Lines

Q. You have mentioned the operation Zeppelin. Will you tell us about your participation in this?

A. The operation Zeppelin was initiated in 1942. The purpose of this organization was to choose from a selection of Russian prisoners intelligent and suitable men to be deployed on the eastern front behind the Russian lines. This work was done by our own Commandos of the operation Zeppelin. The PW's thus selected were turned over to Commandos in the rear, who trained the prisoners. They were trained in assignments of the secret messenger service and in wireless communications. In order to furnish these prisoners with a motive for work, they were treated extremely well. They were shown the best possible kind of Germany. This was accomplished by trips around Germany where they were shown industry and farms, and superhighways.

Q. What was your particular function in connection with the training of these units?

A. I laid down the policy for the training, but did not myself participate in the execution of the plan. I remember only that one time in 1943 I called a meeting of the Commando leaders at Breslau. This was necessary because after Stalingrad and the general withdrawal in Russia, the influencing of the Russian prisoners had become increasingly difficult. Therefore, it became necessary to change from a mass deployment of Russian prisoners, such as dropping them by parachute, to using a few highly-skilled, intelligent Russians who were with us because of their conviction.

Q. At approximately what period of time was this change noticeable?

A. That was in January 1943.

Q. Thereafter, you were confined to the very limited group that you have just described?

A. Yes. Thereafter we attempted to select prisoners from the larger PW camps where every kind of category had been thrown together. We tried to select those who would be valuable to us and confine them to one special camp.

Q. Are you still speaking about Russian prisoners for use on the Eastern front?

A. Yes.

Q. As far as the operation Zeppelin is concerned, that was limited entirely to the Eastern front?

A. Yes, only to the Eastern front. From the wireless reports of these Commandos behind the Russian lines and the special reports of those Russian prisoners confined to the highly selected camp, we made reports.

German Intelligence on U. S. Failure of Atom Bomb

Q. Let me turn to another subject. What was the substance of your Intelligence as to American and Allied progress in the development of the atomic bomb?

A. I can say that our Intelligence failed completely in this connection.

Q. Just what did you receive in the way of reports?

A. The only lead we had as to the development of the atomic bomb we got through a Hungarian professor by the name of Hevessy, living in Stockholm, who, in turn, got his information from a Dane by the name of Niels Bohr.*

Q. What were you told?

A. We did not know anything as yet, but I had the intention to follow up this lead. We did not know anything about the atomic bomb, but only about the progress of atom smashing. It is possible, too, that we received some information via Lisbon or Madrid, but these were no real sources of our Intelligence Service, but only newspaper reports.

Q. To what do you attribute the failure of your Foreign Intelligence Service to keep you informed?

A. There are two reasons for the failure of our Intelligence Service: One, my knowledge of Amt Mil was very limited, as Amt IV only had been concerned with political matters. When I organized Amt Mil along technical lines, I discovered that I was lacking specialists and technical advisers who could have outlined the correct objectives. Subsequently I had great difficulties in selecting personnel, as the technical engineers did not know anything about the Secret Intelligence Service, and the Secret Service people did not know anything about technical engineering. For this reason I searched for new material, and trained a mixture of Intelligence people and technically-trained people. I remember that towards the end of 1944 we had installed some new people in Switzerland and Spain, but no results came from these sources.

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*See p. 1629 of this volume.

Q. Did you have agents in the United States who were in a position to give you any reports?

A. In the United States we had no active Intelligence Service. All efforts to organize such a service failed right at the beginning.

Q. What period?

A. In 1944 I started some special purpose U-Boat Commandos, one of which was sunk and the other was taken prisoner in the United States.

Q. What did Kaltenbrunner have to do with your plans for these agents whom you were sending to the United States?

A. He gave permission for funds to be used.

Q. What happened to your other efforts?

A. Those efforts were limited mainly to neutrals, such as Spain, Portugal, and South America, so-called Glacier countries, in order to gain information about North America.

German Intelligence on D-Day Invasion

Q. On another subject: What was your intelligence as to the time and place of the D-Day invasion?

A. This question is very difficult to answer, because since January 1944, we were literally swamped with a flood of messages about the time and place and the possibility or impossibility of an invasion. In collaboration with the General Staff in the Department XIV Armies West we constructed a model map on which was shown how our Intelligence Service was deceived by a flood of false information which was directed to it by the enemy Intelligence Service.

Q. When did you construct this map?

A. Beginning of July '44.

Q. That was after the invasion had taken place?

A. Yes.

Q. How much actual intelligence did you have prior to the landings on the Normandy beachheads?

A. From the greatest number of incoming messages we took an average and deduced from that that a landing was imminent. We also deduced that from the instructions given by radio to the resistance movement in Holland, Belgium, and France.

Q. Were you able to determine the sense of those messages?

A. I believe that our counter-espionage service intercepted one message to the French resistance movement twenty-four hours prior to the invasion. They decoded it and all coastal defenses were notified and alerted from Paris. However, something didn't quite work out. Evidently the local military authorities didn't understand the scope and importance of this.

Q. Were you able to fix upon a place where you needed to marshal your forces?

A. I can't say that exactly, but I assume that also from this wireless message one could assume a certain general direction.

Q. Did the military command make any criticism of the failure of your Intelligence Service to adequately warn them for the invasion forces?

A. Yes. We were criticized very strongly. However, this criticism was not directed against us, because at the time of the invasion Amt Mil was under the supervision of a General Staff Officer and my political Intelligence Service was not entirely responsible for the lack of military intelligence.

Q. Who was responsible for the agents that you had in England or in other places outside of Germany—Amt Mil or Amt VI?

A. At what time, please?

Q. At this time. Prior to the invasion.

A. That was only Amt Mil. Then Amt VI had agents only in the neutral countries.

Q. So that the criticism that was directed against the failure of intelligence fell on Amt Mil?

A. Yes; Colonel Hansen was chief.

Q. From what sources were these floods of messages principally that you have referred to?

A. These messages came mainly from the receiving stations in neutral countries, as the main effort of all information at that time was directed towards determining the time, place, and strength of an invasion force. I want to give an example: Every day approximately forty messages were received from good and bad sources and only an average and an analysis of these messages would give an approximately reliable view. From this view one could tell that the invasion was imminent, but the details one could not determine exactly.

Q. Are you talking about all messages received in Amt VI or only those in Amt Mil?

A. All messages regarding the invasion were put at the disposal of the central stations of the Army and the Government.

Q. Reverting back to the attempts to land agents in the United States, what consideration or effort did you give to operations in the Caribbean and Florida waters?

A. As far as I can remember, Amt VI did not undertake anything in that direction. Whether any such undertaking took place in earlier times through Amt Mil I can't say for sure, but I remember vaguely that Amt Mil, through its Meldegebiet Hamburg, did at one time make an attempt to land agents at that time, but I don't know whether it was carried through. In any case, we never got any reports from North America, from that part of the country. I know, however, that Meldegebiet Hamburg had one or two other connections in North America.

Q. Tell us about those.

A. In one case I was informed that the FBI probably had control already of the wireless set. That was near New York.

Q. Are there any other incidents?

A. The other one I don't know about, but it probably was not important, otherwise it would have been reported to me.

German Activities in Argentina

Q. Tell us what you know about the incident of one hundred thousand United States dollars being dispatched by a sailboat to Argentina early in 1944.

A. That is called the undertaking "Jolle II," named after the type of boat that was used; and two agents with medical supplies and money were sent. The radio connection between the boat "Jolle II" and the agent in Argentina worked satisfactorily. They met at the designated point. The commodities were exchanged and two or three German agents were placed on that boat in order to return to Germany.

Q. How much money was landed?

A. I thought very much about this question and if it hasn't slipped my mind because of the many cases that I have handled, I remember that it must have been something like one hundred thousand dollars.

Q. Was there a second shipment, also of one hundred thousand dollars, either late in 1944 or early in 1945, also sent by sailboat to Argentina?

A. In 1945, another such mission was supposed to start, I believe from Norway. The necessary funds had already been subscribed. This was also a sailboat, but never started. You must not confuse these funds with the funds used for the North American missions.

Q. Let's stick to Argentina strictly and be sure that we understand all that you know. Had there been a delivery prior to the one hundred thousand dollar delivery early in '44?

A. Yes. If I remember correctly, the chief commissioner to Argentina took funds along in the year 1942.

Q. What amount?

A. Fritz Backer is the name.

Q. In what amount?

A. I can't remember the sum correctly.

Q. Was it in American money?

A. No, it was in British currency if I remember rightly. Pounds.

Q. A substantial amount?

A. Yes, a substantial amount, ten or twenty thousand pounds, perhaps. Then I remember a compensation agreement whereby the Telefunken Company paid our agents in Argentine currency and we paid the Telefunken Company in Berlin in Reichsmarks.

Q. How much was involved in this transaction?

A. I don't remember it exactly, but it was a substantial sum in Reichsmarks, something like fifty, sixty, or seventy thousand marks. The equivalent in Argentine currency is unknown to me.

Q. When was this transaction?

A. At the end of 1943.

Q. Were there any other shipments or transfers of any kind between '42 and '44?

A. I cannot remember that there was another transaction with South America.

Q. How were these funds expended after transfer to Argentina?

A. These funds were used for, one, to pay the support of our agents; secondly, to pay for the expensive transmission equipment; and, thirdly, as it is customary in Argentina, as bribery for the middleman.

Q. Do you know who received the shipment of money in early 1944?

A. Becker and Franzock received that money. Franzock was the chief wireless operator.

Q. Was Becker's name Johannes Siegfried Becker?

A. Yes. Johannes Siegfried Becker.

Q. What was the sailing boat expedition which was planned, which you say was planned to start from Norway but did not get under way, in charge of Schuchmann?

A. Schuchmann was our liaison officer with the Navy in these cases, who worked on such cases together with Group VI D.

Q. What was Schuchmann's full name?

A. I don't know. I only know that he was Captain Schuchmann.

Q. What was the name of the second boat that was to be used?

A. I can't remember that now.

Q. At that point did the expedition fail?

A. That was the second one?

Q. Yes, that one that was to sail from Norway.

A. The boat never sailed, first of all because of the general deteriorating military situation. I could not follow it up towards the end.

Q. Were the funds ever gotten together and made ready to put on this boat?

A. If I remember correctly, everything was quite ready for sailing, but I can't say it with a hundred percent certainty.

Q. Was Schuchmann in charge of equipping the first and second successful expedition?

A. Yes, as far as the naval preparations were concerned he was.

Q. He was also in charge of the second expedition as far as it was prepared?

A. Yes.

Q. Reverting to the subject of the atomic bomb, when you said that you had a lead from this Hungarian Professor Hevessy, and from Bohr through him, do you want to say that Professor Hevessy in Stockholm actually received information from Niels Bohr?

A. No.

Q. That was an idea of yours?

A. It was only a liaison.

Q. A possible liaison?

A. Yes.

Q. Only a possible liaison in America?

A. Yes.

Q. A possible liaison from Stockholm to North America?

A. Yes.

Use of Astrology to Turn Himmler Against Hitler

Q. You made reference to your astrological influence with Himmler. Will you tell us what you meant by that?

A. In the spring and summer of 1943 I talked with the doctor and masseur of Himmler whose name was Kersten. We both agreed that Germany probably was going to lose the war and that it was necessary to reach a compromise. According to my way of thinking, I believed that with the aid of the Secret Intelligence Service I would have to influence the most powerful man in Germany, Himmler, in order to reach that goal. I was convinced that Hitler could not be converted to this point of view. Therefore, it was my calculation to turn to Himmler, and Kersten promised me to use his influence to aid me. It was he also who for the first time suggested using astrological influence for his and my purpose. Kersten prepared the way with Himmler in that direction and reported to him that he knew an astrologist who would be able to clear up the future of Germany. The purpose of this preparation by Kersten was that Himmler should give credence to my proposals.

We had progressed so far in our common effort that towards the end of 1943 Himmler declared that he was prepared to receive the astrologer Wulf from Hamburg. I myself made the acquaintance of Wulf early in 1943 through Kersten and then used my influence to bring him to Himmler. I gave him the instructions to first of all point out the untenable situation of the Reich and to influence Himmler in favor of taking matters into his own hand and put an end to the situation which had deteriorated because of my attempts to bring about a separate compromise peace.

Wulf also read Hitler's horoscope and stated that Hitler would be endangered on the 20th of July 1944 and then even more in November 1944, and if he would not step aside and lay down the reins of government, he would not survive May 1945.

Q. When and where had Wulf read this horoscope?

A. It was early in 1944. I believe he worked it out at home and then passed it on to Himmler through me.

Q. Was it brought to Hitler's attention?

A. No.

Q. Go on and tell us about Wulf and Himmler.

A. Through this reading of the horoscope, my influence over Himmler increased steadily, as I harped on the point of elimination of Hitler. The influence of the horoscope and the doubts planted in Himmler's mind were very great and, although I was not with Himmler all of the time, my influence over him increased without my having contact with him.

Q. Did that continue through to the end?

A. In December of 1944 during a quarrel at Himmler's, I quite openly again touched the question of the elimination of Hitler, because Himmler at that time was very much impressed with the horoscope because of the fact of the entry of Hitler's disease in November 1944, as forecast by the horoscope.

Q. What disease?

A. That was the result of the attempt on Hitler's life, that disease. The weaker Himmler's position became, the more he turned towards me and listened more and more to my plans.

Himmler's Efforts to Remove Hitler and Make Peace

Q. You said that Kaltenbrunner as he came closer to Hitler began to hide things from Himmler. At what point in all these affairs did Kaltenbrunner by-pass Himmler and deal only with Hitler?

A. I would name the 20th of July 1944 as the turning point, at which time, according to my observation, Himmler had something to do with the plot. After that time Kaltenbrunner and Fegelein, from then on those two conspired against Himmler by using their influence with Hitler.

Q. How do you then explain that Himmler got much more power after the 20th of July and was appointed to quite a few new positions, for instance, Commander of the Home Army, shortly after the 20th of July, if you suspect that he had something to do or some knowledge of that conspiracy of the 20th of July?

A. Himmler was appointed the Commander-in-Chief of the Home Army on the 21st of July, and his possible participation or knowledge of the plot was brought out later during the course of the interrogations of the captured members of the conspiracy, and from then on Kaltenbrunner and Fegelein started to undermine his position.

Q. In view of the fact that Himmler became implicated, how do you account for his retaining his command under the Home Army?

A. He had too much power to take it away all at once. He was removed from the inner political circle and was later on given a small sector of the front and was made Commander of the Army Group on the Upper Rhine, even though he was Commander-in-Chief of the entire Home Army; and when he had completed that mission, he was given the most difficult assignment of all, to stop the break-through on the Eastern Front. I base my assumption that Himmler had participated to some extent in the plot on the fact that his influence suddenly decreased with Hitler, whereas Kaltenbrunner's influence steadily increased, and I had the impression that towards the end Himmler lived under constant pressure from Kaltenbrunner.

Q. What do you know about the allegation that in the closing days Hitler read Himmler out of the Party and stripped him of all his positions?

A. When on the 28th of April 1945 I returned from Copenhagen to Luebeck from my discussions with Count Bernadotte after the refusal by the Allies of Germany's capitulation only to the Western Powers, my section chief of VI C, Doctor Rapp, informed me that the refusal of the capitulation of Germany to the Western Powers was constantly broadcast over the radio and that this refusal had resulted in Hitler's issuing an order of arrest against Himmler, and at the same time it was announced over the German radio that Himmler had been deprived of all his offices, so Doctor Rapp told me. I didn't hear it myself.

Q. Did you see Himmler thereafter?

A. On that evening I had to report to Himmler. I wanted to take along Count Bernadotte for my protection, but I had received an order to report alone, and at that time I feared for my life. For that reason I ordered the astrologer Wulf to accompany me to Himmler.

Q. Did Himmler give any evidence of being stripped of his authority?

A. No. On the contrary, I had the feeling that he was displeased with the fact that, as he had told me three days previously, he was not already the successor of Hitler. At that time I received the impression that something had gone wrong with his plan to do away with Hitler.

Q. Did Himmler thereafter ever give any indication or knowledge that he had been stripped of his authority and let out of the Party?

A. When I saw him again on the 1st of May at 9:00 o'clock, upon my second return from Copenhagen, I saw him at his CP near Travemuende and found a wreck of a man, a bundle of nerves. He couldn't comprehend the fact that now Doenitz was the Chief of State of Germany, but still he tried to aid me in my plans to prevent Denmark and Norway from becoming battlegrounds, and he suggested that he wanted to propose me to Under-Doenitz as Secretary or adviser to the new Foreign Minister, Count Schwerin-Krosigk.

Q. As to Himmler's apparent plans for overthrowing Hitler or seizing power, what specifically had he done to bring about such a change?

A. He talked to me about the possibility of removing Hitler, of forming a new government and of dissolving the Party. I knew that he planned to found a new party. I had the feeling that a complete change had been brought about in Himmler's political attitude. I believe it was at that time that he said to me that he regretted the fact that he hadn't listened to me earlier. In other words, he must have regretted that he had devoted himself entirely to Hitler.

Q. Was there any connection between Himmler's discussions and plans and the plans of Obergruppenfuehrer Steiner and Obergruppenfuehrers Hildebrand and Gottberg?

A. I can't say from personal knowledge, but I know that it is possible that these three people also had influence with Himmler and that these three influenced Himmler in that direction.

Q. What was the position of Ohlendorf in all of this?

A. Ohlendorf was in that connection a Parsifal. He declined any such aspirations.

Q. Did he take sides with any particular faction?

A. He declined especially the aspirations of Steiner for such a Putsch.

Q. What was Bormann's position at this time? Whom did he stand with?

A. As far as I know, Bormann was, as always, the strong and evil spirit who dwelled in the vicinity of Hitler.

Q. Did he have aspirations for seizing power for himself?

A. I must consider it possible in view of the character of the man.

Q. Where did Kaltenbrunner stand?

A. Kaltenbrunner was a loyal follower of Hitler to the end and he considered all Himmler's plans as weaknesses. Kaltenbrunner, in April of 1945, stripped me of my position as head of Amt VI and Amt Mil, and replaced me by Bonig and Skorzeny, who were his friends. When they showed the order removing me from my offices to my fellow workers, they stated that the reason for my removal was that, together with Himmler, I had become politically unreliable.

Q. What was the date of that?

A. On the 24th or the 26th of April 1945.

Q. By that time Kaltenbrunner had been named Deputy for Austria, had he not?

A. Yes, he was the Deputy of Himmler in the southern part of Germany, not only Austria.

Q. He was continuing to function as chief of the RSHA?

A. Yes.

Q. Was it by his own action that you were removed as head of Amt VI and Amt Mil?

A. Yes, a co-worker of mine came specially by fighter plane from southern Germany to Franzburg in order to present me with this order.

Q. How do you account for the fact that you escaped with your life if you were regarded as politically unstable?

A. If I had been in the southern part of Germany, I wouldn't have considered my life worth much. In the northern part I only encountered the one danger on the 28th of April, when 1 had to present the refusal of the acceptance of the capitulation of Germany by the Western Powers, to Himmler.

Q. Was this offer of capitulation to the Western Powers Himmler's offer? It was not an offer by the Reich Government as a whole?

A. No. By Himmler is his really powerful position.

Q. As Reichsfuehrer SS?

A. Reichsfuehrer SS, Reichsminister, and so on.

XXV. WALTER WARLIMONT*

Excerpts from Testimony of Walter Warlimont, taken at Nurnberg, Germany, 12 October 1945, 1030-1145, by Lt. Col. Thomas S. Hinkel. Also present: T/4 R. R. Kerry, Reporter.

German Aid to Franco During Spanish Civil War

A. * * * In the summer of 1936 I got, surprisingly enough, a detail to go to Spain as a military plenipotentiary to General Franco. I went there through Italy and on an Italian man-of-war by way of Tangiers, and joined General Franco in Spain. My duties were administrative, administrator for the German troops there, and to advise General Franco whenever he had further wishes concerning the detailing of German troops.

When I came there, there was only a squadron of transport planes and a wing of fighter planes, 9 or 12 planes. Later on a battalion of tanks, a battalion of anti-aircraft artillery and some 30 or 40 anti-tank weapons were added to this German detail, in the whole, about 800 to 1,200 men, but they all were under Spanish command.

Q. This was in 1936?

A. Yes, '36. That lasted until late in October or early November when the so-called Condor Legion was detailed to Spain. This was by far a bigger unit, under the command of General Sperrle. And then I was asked whether I wanted to join them or go home, and I asked to be permitted to leave Spain and go home. Before that was accomplished I was detailed to Ambassador General Faupel, who came there early in December 1936. I only stayed with him for 8 to 10 days and then was allowed to return home.

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*Major General Walter Warlimont was Deputy Chief of the Operations Staff of the OKW, and as such assistant to Jodl.

Genesis of Hitler's Plan to Attack Russia

Q. When was the first time that you heard of an intention to attack Russia?

A. The 29th of July.

Q. What year?

A. 1940.

Q. Why would that particular date stick in your memory?

A. On the 19th of July, Hitler made his speech before the Reichstag concluding the French campaign and promoting all the generals to field marshals and so on. It is only natural that a man in my position was awaiting a reward of some kind too, and so I heard shortly afterwards that I should be promoted from colonel to brigadier general probably on the first of August. And when Jodl announced that he would come to a conference of his staff, which seldom up to that time ever happened, I thought that it had something to do with me and this promotion. I don't know whether it was the 28th, 29th, or 30th. And against all my expectations, he made the announcement that Hitler had decided to war against Russia.

Q. What was the statement that he made?

A. I can't exactly say the words he used, but he made the impression on me and on the other officers of the Wehrmacht Fuehrungsstab who were present, that Hitler had taken the resolution to go to war with Russia, that is, that Hitler expressed if not his decision, at least his intention to wage war on Russia.

Q. What else did he say besides that?

A. He may have noticed the consternation in all of us when he announced this because we lived in a mood of peace after concluding this French campaign. And so perhaps for this reason, he added that this war would have to come sometime anyway, and that it would be better to conclude it in this war instead of taking up the weapons again some years later.

Q. Do you know whether the statement that Jodl made about taking up arms now instead of a few years later was Jodl's thought or was it Hitler's thought, or was it expressed in such a manner that you couldn't tell whose thought it was?

A. I can't recall it exactly, but I suppose Hitler's, as he at this time always did use the expressions of Hitler when he gave us such statements like that.

Q. What else was said at this conference?

A. He gave us a special task.

Q. Jodl did?

A. Yes. And this task consisted of preparing an order to concentrate the troops on the new German-Russian border, and neither the railways nor the communications nor the accommodations for troops and so on were sufficient to prepare a big concentration of troops. And so he gave a directive of the OKW, which had actually been released on the 9th of August under the designation "Aufbau Ost," and this order contained all the different preparations which had to be made in order to make it possible to concentrate troops at the border.*

Q. In the course of this statement, did Jodl indicate that he had told Hitler that it was his, Jodl's, opinion that an operation against Russia that fall was impossible?

A. I only remember that I have read, whether at this conference or sometime later, a written statement by Keitel against this policy.

Q. You don't remember whether Jodl told you at that conference about what I just said?

A. No. He may have said that the date was fixed for the next spring, but whether he spoke of Hitler's intention, I couldn't recall. But I know that Hitler had mentioned his intention to Keitel and that Keitel contested it, based on a written memorandum.

Q. You saw the memorandum, didn't you?

A. I saw it some time, either on this day or some other day.

Q. Was it during the year 1940 that you saw it?

A. I certainly think that it was about this time.

Q. Now, did your office, starting in early August 1940, devote most of its energies to the preparation of the plans against Russia?

A. No, on the contrary. We prepared this order I spoke of, "Aufbau Ost," and the only task in connection with those plans of Hitler assigned to us was to prepare a study of how to conduct the operations against Russia. But Jodl wanted to have that only for his own information.

Q. Well, as a matter of fact, hadn't the OKH prepared a proposed plan for the conduct of the Russian operation, and wasn't the plan that you have just referred to, really a study of the problem with reference to OKH's plan? Do you remember that?

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*See document 1229-PS, vol. III, p. 849.

A. No. The study I referred to was entirely independent from the task which the OKH had, and the OKH had to prepare it for official purposes, and had to report about it to Hitler some time later. This study, which was carried through by Lt. Col. Von Losberg, a name I mentioned earlier, was just to give Jodl a date for his own purpose, that he might not be dependent on that plan, the tentative plan which the OKH would report to Hitler.

Q. As a matter of fact, did it not happen that the two plans more or less coincided?

A. Yes. They coincided in the main lines.

Excerpts of Testimony of Walter Warlimont, taken at Nurnberg, Germany, 16 October 1945, 1600-1745, by Maj. Gen. William J. Donovan. Also present: Pvt. Clair Van Vleck, Court Reporter.

Mikhailovic's Collaboration with the Germans

Q. I show you a paper dated the 25th of January '43,* and ask if you can identify it; if your initial is on it; and if you can inform us of any matters relating to this that do not appear in the document itself?

A. It is a telegram set up and sent off by subsection four of the Division for National Defense, which does not bear my signature. The signature which appears at the bottom on the right side, is that of a Captain who was with this section, but whose name I cannot recall at this moment.

Q. You just note that down and let us know when it occurs to you.

A. Yes. I know the other signature too, but I cannot say whom it belongs to, this blue one. I know the signature. The telegram is directed to the German Foreign Office and repeats the contents of another telegram which the commanding general of Serbia had sent to the OKW. This telegram of the commanding general of Serbia reads: That the President of the Serbian Cabinet on his own initiative has proposed to arrest six hundred former Serbian officers and to transport them, as prisoners of war, to Germany. Those officers are undesirable, as followers of Tito, Mikhailovic, and as supporters of rumor propaganda and unrest in the country. The telegram further reads that it is intended to carry through the undertaking as soon as possible. The proposition of the President of the Council complies with the intentions of the German commanding general.

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. I would like to ask you a question on that paper. Do you know of your own knowledge or, if not of your own knowledge, has it even been reported to you that Mikhailovic was working with the local German commanders in the field?

A. Yes. That was known.

Q. For how long a period did he do that?

A. I have to think of that to give you an exact answer, but I am certain that it started several times and was discontinued several times; taken up again and lasted at least for several months each time.

Q. Did he do that in order to obtain aid in fighting the Tito partisans?

A. We never knew why he did it. Hitler always believed that he only did it because he was short of ammunition and tried to persuade the German officers, who always were inclined to believe in a nationalist like him, that he was going to support them, but Hitler said, "He will always remain a friend of England and a foe of Germany, so it is entirely wrong to go with him." He didn't want it.

Q. What was your opinion about it?

A. I couldn't form any opinion of my own, in spite of being two or three times in Serbia. I always got the opinion of the officers down there who believed in the things and wanted to continue with it.

Q. Had Tito ever given assistance to the Germans?

A. So far as I know, no.

Q. Do you know whether or not Tito had ever fought Mikhailovic?

A. Fought him?

Q. Yes; had he had battles with Mikhailovic?

A. It was hard to recognize who fought who in that country, but I am convinced that parts of both parties fought each other several times.

Q. It was Hitler's considered opinion that on any occasion when Mikhailovic sought the assistance of the Germans, it was as a temporary expedient?

A. As a temporary expedient?

Q. As a temporary means of getting over a moment when he didn't have ammunition.

A. Yes. He only looked at it like that, and if Hitler had discovered before that such a connection, between the subordinates of Mikhailovic on one side and German officers on the other side, was going on, he would have prevented it. It may be of some interest to you, General, that Hitler's respect for Tito was very high and that in the last stages of the war he said several times that Tito should be an example to every German general. That is specially interesting for us as General Staff officers because Hitler wanted to demonstrate by this means the difference between the rough field general, as he thought Tito to be, and the thinking European generals, as we saw ourselves to be.

Q. Do you mean by that, that he preferred the Rommel type of soldier rather than the intellectual type of general?

A. Yes.

Q. And he compared Tito to Rommel?

A. No, more like Schoerner.

Q. What did the German Generals think of Tito?

A. He certainly was a strong man who came through all difficulties and lost a great number of his men, and in spite of that, always was there again, but politically he was entirely opposed to our kind of thinking.

Balkan Collaboration with the Germans

Q. I show you here a photostatic copy dated the 8th of December 1940 from the Fuehrer's Headquarters, and ask if you recognize your signature on it, and if it refreshes your recollection as to the circumstances surrounding it. You will find a translation attached.*

A. It is a document issued by the OKW Armed Forces Operations Staff, Division for National Defense, and it is signed by me. It says that, in preparation for the campaign in the Balkans, several officers will be sent to Bulgaria.

Q. Does that recall to your mind anything that would be of help in looking at the paper, or understanding it?

A. Yes. It is certainly in connection with the preparations for the campaigns which started some time later, but I couldn't say any more than is in the paper itself. It says that those four officers of the Air Force were sent to Bulgaria for reconnoitering purposes, reconnoitering of air fields and so on, I suppose, and that the Navy sent two officers and one employee in order to assist the Bulgarians in the defense of the coast.

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. Also at that time, didn't you send down officers to organize watches on the hills in Bulgaria against the British coming in on raids?

A. Yes. That is true. That was during the winter of 1941 because of the care Hitler always took against air raids on Rumanian oil fields. That was the reason.*

Q. How many German soldiers in civilian clothing did you have in Bulgaria at that time?

A. It is funny, but I believe the number was about 200. I think it was restricted to a number of that kind.

Q. Was the King aware of that? Was it by arrangement with the King?

A. Yes. I think so. I don't know exactly. Everything was done by arrangement with the King, much more than with the government in Bulgaria.

Q. Although Filoff was a friend of Germany at that time, was he not?

A. He was estimated to be a friend.

Q. When did you feel that your arrangement was solid with Boris for his help in Bulgaria?

A. Was solid?

Q. Was fixed so that you could rely upon it.

A. I don't know when it really had been established, but I know that we had no difficulties at that time to make him consent to all the measures we wanted from him. I only saw him some time later, when everything was much more firmly established.

Q. When did you have Paul of Yugoslavia with you?

A. In May or June '39.

Q. So from May or June of '39 all the way through he was in working arrangement with you?

A. I don't know. I only saw him at parades and at the theater. I had nothing to do with such arrangements. I didn't hear about it, but I believe so.

Q. Do you know that at the same time he was pretending to the British that he was with them?

A. Yes. He was.

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*See document C-53, Vol. VI, p. 877.

XXVI. ADOLF WESTHOFF*

Excerpts from Testimony of Adolf Westhoff taken at Nurnberg, Germany, 2 November 1945, 1430-1800, by Col. Curtis L. Williams. Also present: Capt. H. W. Frank, BWCE, Interpreter; John Wm. Gunsser, Court Reporter.

The Murder of RAF Prisoners of War at Sagan

Q. Now, General, during the month of March 1944 you were in charge of the Allgemeine Abteilung; is that right?

A. Yes, beginning with the 1st of March.

Q. During the month of March there was an incident which occurred at Sagan which I want to call to your attention and ask you to tell me in detail how that incident was handled by you, by Keitel, and by Hitler himself. There were eighty Allied fliers, citizens of England, who had escaped from one of the Luftwaffe camps just previous to this date, March 1944, and they were later captured and some of them were executed. Now, I want to know from you what camp they escaped from. Will you answer that?

A. It was called Luft III, Sagan.

Q. Now, this camp belonged to the air forces, didn't it?

A. Yes, but I don't know it personally; I have never been there. This was a Luftwaffe camp and the commandant was a Luftwaffe officer. His name was Col. von Lindeiner.

Q. Now, after these prisoners had escaped Keitel was criticized in the presence of Hitler by Himmler and Goering, wasn't he?

A. Well, I don't know whether it would be right to say that he was criticized. May I tell the story as I heard it?

Q. Yes, but we will interrupt you so that we can bring out the points which are of the most interest to us.

A. Up to that time I did not know Field Marshal Keitel personally. I hadn't been presented to him, but I knew him by sight. For some reason which I can not remember, Keitel sent for General von Graevenitz. On that occasion he gave the order that I should accompany General von Graevenitz so as to be introduced as his successor. When we arrived at the HQ the Field Marshal stated the following.

He was considerably excited about the escape of these eighty people, due probably to the fact that he had been reproached by the Reichsfuehrer and the Reichsmarshal. He said that it was incredible that this sort of thing should have occurred, and it must not be allowed to continue. He explained that a conference had taken place with Hitler that same morning in the presence of Himmler and Goering, and it had been decided that, in the future, those of the eighty who would be recaptured must be shot. And he added, "Gentlemen, I can tell you that at this moment most of them have already been shot."

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*General Adolf Westhoff was Chief of the Prisoner of War Information Bureau.

Q. Now, you state that Field Marshal Keitel, in the presence of Graevenitz and yourself, stated to you that the eighty British officers who had escaped from Sagan would be shot when recaptured, and many of those who had already been captured had been shot; is that right?

A. He said, "I can tell you, gentlemen, that the bulk of the people are already dead now."

Q. Did he tell you who had shot them?

A. I am just going to tell you about that.

Q. Just a minute; answer that question: Did Field Marshal Keitel tell you who had shot them?

A. Yes, the Gestapo.

Q. Through whose orders did Field Marshal Keitel say, and under whose authority, were these persons shot by the Gestapo?

A. In my opinion, General Graevenitz raised opposition immediately, but Keitel said, "These things can not go on; we have to make an example and these people must be shot," etc., etc., etc.

Q. But what I am trying to find out from you, General, is through whose authority were these persons shot?

A. I presume that you are aiming at finding out whether they were shot on the authority of Hitler or Keitel, but I am afraid I can't tell you; I can only tell you what Keitel has been saying.

Q. Well, didn't Keitel tell you that he had ordered them shot?

A. No. He said, "It was decided in a conference with Hitler and in the presence of the Reichsmarshal and Himmler that these people were to be shot." That is what he told me, and I can't tell you any more. The Field Marshal had given personal instruction on how this whole matter was to be dealt with, and he also said that no written documents were to be compiled on this subject. .

Q. What instructions had he given to you that he refused to put in writing concerning this incident?

A. He said that no correspondence should arise on this matter.

Q. Well, if in the other orders, General, issued by Field Marshal Keitel, there are paragraphs which refer to turning over certain prisoners of war to the Gestapo, what would you say those paragraphs, worded as such, meant?

A. Gentlemen, in that connection I must go into detail regarding the position of the Chief of the Department of POW Affairs. The position of the Chief of POW Affairs has always been that of trying to maintain that the Geneva Convention was observed.

Q. Yes, we know that, General, but my question is: If I showed you an order issued by Field Marshal Keitel, and in it a paragraph said that all persons who had formerly been prisoners of war and had escaped and were recaptured, upon their recapture will be turned over to the Gestapo, what would be your interpretation of that paragraph in Field Marshal Keitel's orders?

A. Well, of course, you could find two interpretations for that. One was that the so-called bearers of state secrets, that is to say, persons who had knowledge of certain secrets vital for the war effort, were under certain circumstances to be handed over to the Gestapo for safe custody. You must remember in this connection, gentlemen, that at the time when I took up my office, all arrangements had been in existence for at least two years.

And the second explanation, though one could never quite get to the bottom of that story because the Gestapo did not allow anybody any insight into these matters, was that these people were handed over to be liquidated. But this is a matter which I must explain in more detail. Whenever there was a case that any such people were surrendered to the Gestapo, the Gestapo would always maintain that these people were not shot but that they were used for some work.

Efforts to Abide by Geneva Convention Thwarted by "Orders from Above"

Q. Well, the fact of it was, General, that you in the Wehrmacht and in the prisoners section of the Wehrmacht were anxious to follow the rules laid down by the Geneva Convention,* and, as you have said before you had great apprehension when you turned over one of your prisoners to the Gestapo, as to what would actually happen to them after the Gestapo got them in their hands, didn't you?

A. Gentlemen, on that I would like to make the following statement. I will have to be somewhat explicit. The Service Department of the Chief of POW affairs considered it as its task to see to it that the rules of the Geneva Convention were observed, and whenever breaches of the Convention occurred, then we were the people who did our utmost, as far as we could as soldiers, to prevent such breaches. It would have been unnatural for us to act differently. The Protecting Powers had the responsibility of visiting the camps, and in each case of a breach of the Convention they could reproach us for it; that is to say, that whenever such breaches occurred it was for my Service Department to put matters right, and that is obviously the reason why we were against any such breaches.

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*See document 3738–PS, vol. VI, p. 599.

Repeatedly during conferences in the ministry, when somebody would say that we didn't have to bother about the Geneva Convention, I would get up and I would say, "Gentlemen, the Geneva Convention has been signed by the Fuehrer, [sic] and we are therefore a party to it. In my opinion, until I get specific orders from the Fuehrer that the Geneva Convention can be disregarded, it is therefore my duty to abide by the rules and act so that the rules of the Geneva Convention will be observed." And I should like to add that I do not believe that you will be able to prove a single case against the Service Department of the Chief of Prisoner of War Affairs where the Geneva Convention was disregarded unless specific orders to that effect were received from above.

Q. That brings me to this question. How many times were you ordered by the Fuehrer or Keitel or Himmler to disregard the Geneva Convention when the matter concerned prisoners of war?

A. That, gentlemen, is a very difficult question to answer. I shall try to tell you what I remember, but I suggest that I be given time to think that matter over. It is extremely difficult for me to answer that question in detail on the spot.

Q. Well, you certainly were told to disregard it in this instance, weren't you?

A. Not only was the order given, but we were put before completed facts. On that particular occasion, the fact that these people had been shot was put before us as an accomplished fact. So was the fact that they had already been handed over to the Gestapo. And to try and oppose the Gestapo was quite an impossible task for the Chief of the Service Department for Prisoner of War Affairs. The Gestapo was much too powerful a body for that, and we were much too small. I knew that it was Passe's opinion that the Geneva Convention was merely a piece of paper, just as you must realize, gentlemen, that the opposition to the Geneva Convention was entirely caused by the Party. If ever there were difficulties in connection with breaches of the Geneva Convention into which we made investigations, then these difficulties were due to these Party developments.

The Geneva Convention—"A Piece of Paper"

Q. Did you ever discuss with Martin Bormann's deputy the rules of the Geneva Convention outlined therein which were to be accorded to the PW's?

A. There was a big meeting in Berlin between representatives from the various ministries, and that meeting was attended by Friedrichs and Passe. The reason for the meeting was to draft new rules for prisoners of war. Before I go any further, you must realize that the OKW and we were always accused that we were not strict enough with prisoners of war. We used to reply that we were treating prisoners of war in accordance with the Geneva Convention, and that we were also considering the position of our own prisoners of war in enemy hands, for whom we were equally responsible.

During this meeting, if I remember rightly, the question of parcels from the International Red Cross cropped up. The Party Chancellery demanded that prisoners of war should not get as much as they did at the time. They claimed that the German population was getting angry because prisoners were being fed better than the population. I got up, thereupon, and told Friedrichs that the Chief of the Prisoner of War Affairs was responsible that the Geneva Convention was observed, and that it was my opinion, as far as these parcels were concerned, that the more the prisoners were getting, the better, since that would keep them satisfied. I also quoted that the Reichsmarshall and the Ministry of Propaganda had made clear-cut statements according to which these prisoners of war were to have their parcels, whereupon Friedrichs replied he didn't care what these people had said, that one could treat prisoners of war as one liked; that in fact the Geneva Convention was just a piece of paper.

Needless to say, alterations of any kind were not made, at least not as long as I could help it. But the result of this conference was a decree dealing with the treatment of prisoners, which was in turn sent to all the ministries and the Party Chancellery which vetoed it. That is the only occasion on which I have met Friedrichs or had any personal contact with him.

The Shackling of Prisoners of War

Q. Now, when prisoners were transported from one camp to another, Field Marshal Keitel, knowing that many escapes had taken place while prisoners were being transported, ordered that some of these prisoners be shackled. Do you remember that order?

A. It started at the time of General Graevenitz, but I can put you in the picture. During a certain transport a number of officers—I think more than a hundred—had escaped. Just at that time we had succeeded, after efforts which lasted for nine months, to do away with the shackling of prisoners, which was then the custom, I believe, on both sides. Just as we were very pleased to have succeeded in doing this, we were informed that this new order, referring to shackling during transport, had now come out, which displeased us considerably.

Q. And do you remember what incident brought about the issuance of this new order?

A. Some Dutch officers who were in a camp at Czenstochau had to be taken away from there when the Russians arrived. They were transferred to the camp at Neu Brandenburg. From that transport something like 103—it may have been 130—Dutch officers escaped. That mass escape of officers caused considerable excitement, of course, and that led to this order. But please, may I add that this is as far as my recollection takes me.

Q. Well, you remember that Field Marshal Keitel did order the shackling of officer prisoners, don't you?

A. The order stated that stricter guarding of the prisoners was necessary, and shackling was to take place. It also said that the prisoners were to be informed when they arrived at the station that this treatment was not to be regarded as dishonorable and that it was merely necessary because of previous mass escapes. They were also told that they would be unshackled after arrival.

Q. But it was against the Geneva Convention, wasn't it?

A. Gentlemen, this story was extremely unpleasant for us, as I told you. On the other hand, I can imagine that the Field Marshal had a certain statement by the British Government in mind which stated that no assurance would be given that there was going to be no shackling. I don't know whether it was like that, but it is a possibility. Apart from that, he never had shackling of British or American prisoners carried out at any time. Every transport of American or British personnel had to be reported to the Field Marshal by teleprint, and he made his own personal decision, not only whether and when the transport was to be dispatched, but also whether there was going to be shackling. But to the best of my recollection, he never ordered shackling in any single case of transport of American or British personnel.

Q. But on the other hand, he always ordered the shackling of Russian officers, didn't he?

A. The exact position is that he ordered von Graevenitz that all transports, with the exception of American and British transports, were to be shackled. If ever, therefore, any other transport was dispatched without shackling, then this was done on the responsibility of the commander who was responsible for that transport. Incidentally, French prisoners weren't shackled either. But if such a transport of Russian or Serbian officers was dispatched without shackles and a single one escaped, then this would cost the general's head. I don't want to say it could cost his head; I would say that he was responsible.

XXVII. SIEGFRIED WESTPHAL*

Excerpts from Testimony of Siegfried Westphal, taken at Nurnberg, Germany, 23 October 1945, 1030-1230, by Col. Curtis L. Williams. Also present: Nancy Shields, BCV, Reporter; Capt. Mark Priceman, Interpreter.

OKW Orders for Brutal Treatment of Italian Partisans

Q. I will just ask you if you, in the Army, did not receive an order from OKW which outlined the treatment that would be accorded to partisans in the territory of Italy? If I read you that order, do you think that it would refresh your memory and cause you to remember whether or not you did receive it?

A. Yes, surely.

Q. I then will read you an order which is purported to have been issued by Field Marshal Keitel, entitled "Combatting of Partisans."

A. What is the date of this order?

Q. This order was issued several different times; one was in Russia in 1941; another was issued in the Balkans in 1942; another in Italy in 1944. Copies of this order are purported to have been found in the Headquarters of Field Marshal Kesselring, who was succeeded by Vietinghoff in Italy, and was in the file from 1942 to 1945.

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*Brigadier General Siegfried Westphal, after serving with Rommel in Africa, became Chief of Staff to Field Marshal Kesselring in Italy. After the Army purge which followed the 20 July 1944 attempt on Hitler's life, Westphal was appointed Chief of Staff to Field Marshal von Rundstedt.

I shall read you that order and ask if you saw a copy of it. The order reads:*

"The Chief of the High Command of the Armed Forces
Armed Forces Operations Staff;
Chief Operations Office;

SUBJECT: Combatting of Partisans. TOP SECRET

Reports have been submitted to the Fuehrer that individual members of the armed forces participating in the fighting against partisans have subsequently had to account for their actions in combat. The Fuehrer has therefore ordered:

1. The enemy employs in partisan warfare communist-trained fanatics who do not hestitate to commit any atrocity. It is more than ever a question of life and death. This fight has nothing to do with soldierly gallantry or the principles of the Geneva Convention. If the fight against the partisans in the East, as well as in the Balkans, is not waged with the most brutal means, we will surely reach a point where the available forces are insufficient to control this pest. It is therefore not only justified, but it is the duty of the troops to use all means, without restriction, even against women and children, as long as it ensures success. Any consideration for partisans is a crime against the German people and the soldier at the front, who will have to bear the consequences of partisan plots and who can see no reason whatever for showing the partisans and their followers any leniency.

2. No German employed against the partisans will be held accountable for his actions in fighting against them or their followers, either by disciplinary action or by court-martial. All commanders of troops employed in fighting partisans will be responsible that:

First, the contents of this order are strongly impressed on all officers of subordinate units; their legal advisers are informed of this order immediately; no judgments will be confirmed which oppose this order.

(Signed) Keitel.
(Certified by a Captain.)"

Did you, in Italy, see a copy or know of the order?

A. I am not sure of it. It may be that I did see it, but I cannot say so for sure.

Q. You know such an order was issued, don't you?

A. Yes, I believe so, but I am not sure that I have seen it. There is one sentence in the beginning which sounds familiar to me.

Q. What sentence is that?

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*See document UK-66, vol. VIII, p. 572-582.

A. The sentence referring to the cruelties that have been committed in the Balkans. However, I would like to state again that we had issued an order according to which partisans were to be treated as regular troops, as long as they could be recognized as troops by their insignia or by appearing in organized formations.

Q. That is exactly what I am trying to get at. You officers in the field, in the Wehrmacht, refused to obey orders which were issued by Keitel with such strenuous terms as this order that was issued by Keitel concerning the treatment of partisans, did you not?

A. We couldn't simply refuse publicly to accept these orders.

Q. You accepted them, then threw them in the waste basket, did you not?

A. Yes. We did exactly the same thing with the commando order* which I have already had occasion to mention.

Q. You also accepted them and filed them and never referred to them again, didn't you?

A. We have done so in cases where they were not in accordance with our opinions.

Q. And you did so in this particular order, which I have now referred to, didn't you?

A. Of that, I am not sure. It depends on the date on which it reached us. I don't know when it came to us. I don't know whether the order I mentioned that was issued was provoked by this order or whether we had issued it independently.

Q. You will admit that the order which you, of the OBSW, issued concerning the treatment of partisans, did not have within it the same principles as outlined in the order which I have just read to you, did it?

A. Yes, of course. Excuse me, may I add something? You should keep in mind that I am testifying under oath and I would not say anything of which I am not entirely sure. This is why I am so hesitant and need some time for reflection.

Q. But you are sure, General, that the order which you issued for Marshal Keitel did not embody in it the paragraph that "It is therefore not only justified but the duty of the troops to use all means, without restriction, even against women and children, as long as it ensures success"?

A. This is the most atrocious sentence in the whole order.

Q. But you do know, do you not, that Keitel's order, issued by Keitel himself at the direction of the Fuehrer, contained within it that very paragraph that I have read to you concerning the treatment of women and children?

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*See document 498–PS, vol. III, p. 416.

A. I believe so, but I cannot affirm it with certainty. In any case, I know that we never conducted war against women and children. As this order was found, it must have been issued by the OKW. It is the usual lingo of an order of the OKW.

Q. I will ask you further, if you, as Chief of Staff for Field Marshal Kesselring, did not know that the police troops behind Kesselring's line did take this very action outlined by Keitel towards the partisans in the north of Italy?

A. In Italy, I never heard of such policies being actually practiced and as for other theaters of war, I had no insight. Only now, in captivity, I have learned about alleged policies in Russia, and my feeling is that if those were actually practiced, they have to be condemned very strongly.

Q. You not only have heard of it, General, but you know that Keitel did issue orders couched in the terms of this order, which I have read to you, do you not?

A. Yes, but I do not believe that it was his own mind that produced those orders. As it says here, this was by order of the Fuehrer.

Q. But Keitel did sign these orders, did he not?

A. Yes, of course.

Q. He, as Chief of the OKW, fully expected his troops to carry out that order when they received it, didn't he?

A. Yes.

Q. And although you members of the Wehrmacht in the field refused to carry out that order, you would certainly have been punished by Keitel had he heard that you had refused to obey the order?

A. Yes, of course.

Treatment of Allied Commandos in Africa

Q. Now, General, when you were with Field Marshal Rommel in Africa, you received orders from the High Command outlining the treatment that would be accorded commandos, too, didn't you?

A. Yes. I already testified to that point.

Q. Can you outline for us about what those orders covered?

A. I do not recall the details, but I can summarize them. They provided that in view of the increased activities of commando units behind our lines, all enemy soldiers found behind our lines should be "killed in combat." This order was immediately burned on the spot after Field Marshal Rommel and myself read it.

Q. I now hand you a document which bears the date of 18 October 1942,* and ask you to read it and tell me whether or not this is a copy of the order that was issued by the OKW at the direction of the Fuehrer and which outlined to the troops under the commands who are listed on the last page, and tell me if this copy is the copy of an order which you, in Africa, received concerning the treatment of commandos when captured by your forces?

A. Yes. This is it.

Q. Did you know that at the very time you received this order, that you had in your possession the nephew of Field Marshal Alexander, of the British forces?

A. Yes. It may, however, have been before or after that.

Q. Wasn't Field Marshal Alexander's nephew a commando of the British forces?

A. Yes, he was.

Q. What did you do with him?

A. We treated him as a prisoner of war, although he had violated International Law. He was wearing a German-Africa hat and carrying a German pistol at the time of his capture.

Massacre of Hostages at the Ardeatine Caves

Q. Then if 335 Italians were executed on the afternoon of 23 March 1944, at the Ardeatine Caves, by Obersturmbannfuehrer Herbert Kappler, BDS Italian Aussenkommando Rome, that action of Herbert Kappler was a direct result of an order which was issued by the OKW at the direction of the Fuehrer?

A. Yes, this was so. However, I do not know now whether it was on the 23d March 1944 or whether the exact number of Italians was 335, and as I said before, they were not hostages.

Q. However, OKW and the Fuehrer were informed that you did not have in your possession any of the people who were reported to have committed the crime for which these 335 persons were to be executed, were they not?

A. Yes.

Q. And any order issued by OKW or the Fuehrer concerning punishment that was to be meted out as a result of the action taken against the German Police in Italy was issued with the knowledge that you didn't have in your possession the actual perpetrators of the crime?

A. Yes, but I do request you to make it part of the record that those people who were actually executed were, according to the reports from Kappler, not hostages but people in his custody, anyway.

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*See document 498–PS, vol. III, p. 416.

Q. But the intent in the mind of you commanders in OBSW and in the minds of the 14th Army Commanders and in the mind of Kappler was to convey to the Italian people a message that you had executed 335 hostages wasn't it?

A. Yes, this was so, in order to scare them and discourage them from repeating such incidents.

XXVIII. KARL WOLFF*

Excerpts from Testimony of Karl Wolff, taken at Nurnberg, Germany, 26 October 1945, 1430-1650, by Col. Curtis L. Williams, IGD. Also present: Capt. Mark Priceman, Interpreter; William A. Weigel, Court Reporter.

German Atrocities in Italy. Mussolini's Complaints Ignored

Q. In addition, in those reports which you received daily, you also received reports which showed what action was taken against the partisans, didn't you?

A. Yes, about every three days. As for the other reports that I was just talking about, I said they were daily reports. They did not necessarily come every day. Sometimes they covered several days.

Q. These reports that you received concerning these atrocities outlined to you definitely the number of civilians that were killed or the number of German soldiers that were killed, didn't they?

A. Yes, of course. A look at my records would clarify this whole incident. Reading your report here, it is impossible for me to know what it was all about. It doesn't even mention the unit involved in this action. Assuming that this report was correct, it would have come to me in approximately this form: It would say that on this day four of our soldiers had been killed by bandits; that in the action that ensued, thirteen bandits had been killed and that so and so many houses from which we had drawn fire had been burned down. My subordinate responsible for this sub-area was the Brigade Leader Tensfeld, whom I mentioned this morning and who would be in a position to say much more about what happened in this area of his responsibility.

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*Karl Wolff held the following positions: Supreme SS and Police Fuehrer in Italy; Commander of the Italian SS Legion; General of the Waffen-SS at the Fuehrer's Headquarters; Chief of the personal staff of the Reichsfuehrer SS (Himmler); SS-Obergruppenfuehrer.

Q. Maybe this will refresh your memory: Il Duce made a report to you and to the Army High Command of the atrocities that had been committed in Italy during this period, and number one on this list was this very incident which we are now talking about.* Read paragraph one of that report which was rendered by Mussolini to you and the High Command, and see if that calls to your mind what happened at this place and what action you took in regard to it.

A. (Examining document) I remember Il Duce protested once or twice or possibly three times in writing against excesses committed allegedly by German troops. This matter of Boccia again strikes a familiar chord and I seem to remember this incident now. I believe that I received a report either directly from Il Duce or more likely from Kesselring with instructions to investigate the case.

Q. Did you investigate the case?

A. Yes, of course.

Q. Was there any punishment rendered by you to those who committed it?

A. Il Duce was just an Italian like any other Italian and all his statements or complaints were full of the typical Latin exaggerations. Undoubtedly you have had the same experience with the Italians. Sir, this matter was immediately investigated and a report was made which went to Kesselring and probably to Il Duce. However, the facts as reported were not accurate.

Q. You now deny that the allegations made by Il Duce in his report to Field Marshal Kesselring are correct, is that right?

A. Reports by Il Duce can be generally dismissed. He would take the word of any girl, or of any person who came running to tell him some grotesquely inflated story and accept it as truth and pass it on in the form of a report or complaint.

Q. My question was, do you deny that Il Duce's report which you have identified is correct?

A. Yes, I do.

Q. You will note that they both contain the same number of individuals who are alleged to have been killed, thirteen in each case, do you not?

A. Yes.

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. You will note that in Il Duce's report, he names the persons who were killed, do you not?

A. My God, in such cases I would take the greatest pains to investigate any such reports. I was grateful for them. I did want to establish the facts, but in all my investigations, I didn't find one occasion to punish a single man for any of those alleged crimes.

Q. In other words, you are now admitting that all the time that you were the Commander Plenipotentiary in Italy and all the time that you were the Commander of the SS troops in Italy, that you did not punish a single soldier for any atrocity that was reported to you as commited by them?

A. I do not recall ever having had sufficient evidence to take legal action against any military person involved in such actions, and please ask Tensfeld or my Judge Advocate about these matters. They will confirm the fact that I kept repeating my instructions to be fair and to be just, to do everything legally and lawfully and to avoid irresponsible executions.

Q. I want to ask you if Field Marshal Kesselring did not in paragraph one of his order of the 17th of June 1944,* state as follows: "The fight against the partisans must be carried on with all means at our disposal and with the utmost severity. I will protect any commander who exceeds our usual restraint in the choice and severity of the methods he adopts against the partisans. In this connection, the old principle holds good that a mistake in choice of method in executing one's orders is better than failure or neglect to act. Only the most prompt and severe handling is good enough as punitive and deterrent measures to nip in the bud outrages on a greater scale."

A. Of course, this was the result of this order.

Q. That is exactly what I mean. Under that order as issued by Field Marshal Kesselring on the 17th of June 1944, any of his commanders could have committed any sort of heinous atrocity and no one could have held them guilty for it, could they?

A. Certainly. That was the reason why when I returned I had a talk with Kesselring and why we decided to change this order.

Q. Now General, isn't it a fact that the reason that you didn't investigate these cases that I have enumerated here this afternoon is because at the time that they happened, you were operating under paragraph one of Field Marshal Kesselring's orders of the 17th of June 1944, and couldn't actually legally make an investigation without getting yourself in trouble with Kesselring?

A. All such reports were received by my Chief of Staff, Oberfuehrer Witt, and he would pass on this information to the parties concerned and supervise any investigations. All I can do is reiterate that I do recall several complaints from Il Duce which were investigated and that we always found that, apart from some minor incidents, the facts were not correct.

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*See document UK–66, vol. VIII, p. 572–582.

Q. Don't try to turn me off the question. My point was, you did not investigate those cases because you were operating under paragraph one of Kesselring's order of 17 June 1944. Yes or no?

A. As far as I know and to the best of my knowledge, we did investigate many incidents. Don't think that I am trying to evade your question, and I would not like to antagonize you, but if you would like me to, I could tell you what my real concerns during that period were and what I was personally engaged in in those days.

Q. I know that you are going to tell me that you were going to try to get Kesselring to surrender to the American troops. That is not what I am interested in. I want an answer to this question that I have put to you last: Were you operating under paragraph one of Kesselring's order of 17 June 1944?

A. I was covered by this order, but my hands were not tied by it, and I do seem to remember having heard the name of Boccia, and that I did order an investigation of this case.

Q. But you didn't punish anyone for it, did you?

A. Because according to my recollection, the facts reported by Il Duce were inaccurate. May I also mention that Il Duce had written a long letter of protest to Goebbels which was to be transmitted to the Fuehrer, and in which he protested against alleged conditions in the rear areas in Italy. As a result, an assistant Gauleiter by the name of Leyser was sent to Italy, and he investigated all these things very thoroughly. It appeared from his investigation that practically nothing was true.

Q. As a result of Il Duce's protest to Field Marshal Kesselring, a copy of which went to you and to Ambassador Rahn, Ambassador Rahn then sent a message to Kesselring asking for a reply, which reply was to be based upon the investigations that were made by your headquarters, and Kesselring's headquarters. I want you to tell me, did Kesselring make that reply as demanded by Ambassador Rahn to Il Duce's inquiry?

A. I really don't know, but General Roettiger ought to know.

Q. Marshal Kesselring did not make a reply, but on December 27, 1944, Vietinghoff did make a reply, didn't he?

A. I really don't know. I had no control over the actions of Colonel General Vietinghoff.

Q. I want to show you a copy of the report that was made by General von Vietinghoff to Ambassador Rahn in compliance with the request which had previously been made to Field Marshal Kesselring and read that to you, and then ask you if Vietinghoff believed that there had been committed any excesses by the troops of Germany towards the partisans and innocent people in Italy.

"Subject: Punitive measures in the combatting of partisan warfare. To the German Plenipotentiary Ambassador Dr. Rahn: The cases of exceeding of powers in the application of sanctions which were reported by Il Duce and brought to the attention of Field Marshal Kesselring by the Ambassador have all been looked into. The result of the inquiry is given in the attached. Where cases have still not been fully investigated, they will be reported as soon as details are available.

"The measures which the various German units were ordered to take were based on the policy laid down by the Commanding General of the Wehrmacht in Italy and the Supreme Head of the SS and Police Command in Italy as a result of instructions from the Commander in Chief Southwest. It is not possible to say at this juncture how far isolated cases of undue severity in their application might have been avoided. It is apparent, however, that the Italian reports to Il Duce give an added version or entirely omit the circumstances occasioned by the partisan situation. The order which the Commander in Chief Southwest intends to issue for a unified application of sanctions will put an end to any inconsistencies that still remain in the treatment of such cases." Signed, "Vietinghoff."

Do you remember this report that was rendered by Vietinghoff to Ambassador Rahn?

A. A report which was sent by Vietinghoff to Ambassador Rahn? Was it sent on the 27th of December?

Q. That is correct.

A. No, but it proves that I was correct in my statement which I made from memory that I had ordered an investigation of these and that I had made a report to the Army group.

Q. And it also proves that excesses had been committed by the German troops in Italy against the partisans, doesn't it?

A. Of course, there were excesses committed by both sides, but never to the extent claimed by Il Duce.

Q. Admitting, then, as you do, that excesses had been committed and that you did not punish anyone for the commission of those excesses, what now have you to say about your actions towards the partisans?

A. But I couldn't punish anybody unless I had the facts to prove his guilt. It is easy to be clever now, but in those days I was up against a very difficult task, as everybody on my staff could confirm. I was most conscientious in the investigation of such matters and if I had had any basis for action, I certainly would have taken it. I am fully aware of the fact that the people under my orders were not angels and that normal human excesses were likely to occur. Please, Colonel, you understand and know that both you and I are human and have our human faults, and certainly the people under our command have too.

Before I went to Switzerland, I told my subordinates to tell me all the facts, including those that they had not told me about before, because I knew that when I went to negotiate in Switzerland, I had to disclose all the facts, or else I would get no quarter. Please, also, forgive my excitement, but all I have is my poor head, which has been pumped for the past six months and you should realize that I am telling you everything I can and everything I know.

Q. General Roettiger in his testimony to me has admitted that these atrocities in most instances were committed. He has further admitted that Field Marshal Kesselring issued the orders that I have been reading to you. Now, I want to ask you why you do not admit that these things did happen as they were alleged and why you did not investigate them and tell me the truth and say the reason that you didn't investigate them was because you were operating under the order which prevented you from investigating them, which order was issued by Field Marshal Kesselring on the 17th of June 1944.

A. General Roettiger was a newcomer to Italy. In fact, he spent at least one year less there than I did. Therefore, everything was new to him and made a greater impression on his memory. It would be much simpler for me simply to say that I had instructions or orders from my superior and that I complied with those orders. It would be much simpler for me and possibly for the Colonel, but I am sure the Colonel wants me, since I am testifying under oath, to present the facts as they were, and even though it may be much more painful to do it the hard way, and more dangerous for me not to choose the simpler but less honest procedure, I cannot do so. When I was about to tell the Colonel about the things that were my concern in Italy, I didn't mean to speak about my mission to Switzerland or my negotiations with the Allies. I meant to tell him about all the many things that I was in charge of while in Italy. For instance, relations with the Pope. I had to visit the Pope. I was concerned with so many administrative and military matters in my area of responsibility, and my poor brain just cannot retain all the incidents that happened while I was in office there.

Please don't think that it is cowardice on my part if I don't give you a positive reply regarding these particular incidents. I happened to recall this one name of Boccia, and I told you so, but since I do not have any recollection of the other incidents that you questioned me about, how could I say that I do recall them?

Q. Then you are admitting now that these things could have happened and they wouldn't have been called to your mind, is that right?

A. I never said anything else. I never said they didn't happen. I just said that I didn't know.

Q. I call to your attention some more atrocities that were reported and see if you remember those.* On the 10th of August 1944, at Milan, fifteen Communists were shot as reprisals for partisan activity by order of the German Command. Actually twenty-five political prisoners were taken from San Vittorio prison following an explosion which took place in a German lorry, killing three German soldiers. Fifteen of these prisoners were shot and ten were sent to concentration camps in Germany. The person responsible was the O. C. Gruppen Oberitalien West, Walter Rauff, Standartenfuehrer.

Do you remember that incident and did you investigate it and what did you do and what action did you take?

A. I don't recall this case as such. If the report was made to me, it presented the case in such a way that there was no reason for me to investigate it. Standartenfuehrer Rauff was a highly rated man whom I considered as absolutely dependable and there was every reason to believe that everything reported by him was entirely correct.

Q. Then in your estimation from what I have read to you, Standartenfuehrer Rauff was absolutely acting under orders in this case?

A. Surely.

Q. You didn't punish him for anything that he did there on that date, did you?

A. No. But this incident was not reported to me in the same manner as it is described here.

Q. In what shape or form or wording would a report have had to have been made for you to have taken any disciplinary action on it?

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

A. A report from either a superior or subordinate stating that one of my subordinates had committed an illegal action would have caused me to act.

Q. I now direct your attention to the 1st of September 1944.* During the evening of the 31st of August, local partisans ambushed a German ambulance between Leghetto and Villa Dico about one kilometer south of Colico. The only passenger in the vehicle, an Italian nurse, was killed. The driver, a German, was uninjured. This ambulance, which was already marked as such, was attacked because partisans had observed the Germans using ambulances to convoy ammunition and reinforcements. As a reprisal, about forty Germans and Italian soldiers entered Leghetto during the morning of the 1st of September and burned down five houses belonging to the partisans.

Do you remember this incident and did you investigate that?

A. No.

Q. You do admit, however, that you used ambulances to haul ammunition and supplies to the front, don't you, in Italy?

A. I assure you that I never heard of any case where ambulances were used to transport either ammunition or reinforcements. I can't tell anything to the Colonel that I don't know. I see the Colonel is shaking his head. Why should I try to get out of admitting such minor incidents and why should I deny it if I knew about them, since the most terrible things have been discovered in German concentration camps? Compared to those, these matters seem trifling. The next question by the Colonel would be, where were you? How did it happen, and so forth, and how would I know? I wouldn't be able to give this information.

Q. I didn't ask that. I only asked you: Did you know that it was done?

A. After having seen, as I was forced to do, the moving picture on the concentration camps, I am ready to believe anything, but as for these things, since I didn't know about them I can't say that they happened.

Q. All I want you to answer when I ask you a question, is yes if you know about it, and no if you don't know about it.

A. That is what I have been doing.

Q. What job did you have in Italy on the 17th of June 1944?

A. Supreme SS and Police Chief in Italy.

Q. On the 17th of June 1944, did you receive a teleprint message from the Supreme Commander of the Southwest, Field Marshal Kesselring, which read as follows: "Anti-Partisan Measures"?

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

A. My answer must be the same as the answer that I gave to the question whether I had seen the other orders which were discussed this morning.

Q. I will show you a copy of the order and direct your attention to the units to which it went and ask you if you had previously seen the order or had known about it?

(The document was translated to the witness by the interpreter.)

A. (Examining document) The Colonel would like to know whether I have seen this order?

Q. That is right.

A. I am not sure of it. As I said before, the same applies as in the case of the other orders.

Q. Well, in the heading of the order, it was directed to your Headquarters, wasn't it? Although you were absent?

A. Yes. Yes. Certainly.

Q. And an order with the importance of this order would have been called to your attention upon your return, wouldn't it?

A. Yes, verbally or in writing. This is why I said that I could swear to it only if I saw my own initials on the order.

Q. Well, to the best of your memory you have either seen this order or knew of it and knew of its contents, is that right?

A. (Examining document) Yes, I was familiar with its contents.

(The document reads as follows:)*

"Teleprint to: 10th Army High Command
14th Army High Command
Army von Zangen
Plenipotentiary General of the Wehrmacht in Italy
2nd Air Fleet
German Navy Command in Italy
Highest SS and Police Fuehrer
General of Transportation in Italy
Stab Ruk (Rear Area Command)
Plenipotentiary General of Greater Germany with Italian Gov.

"Re: Teleprint of Supreme Command Southwest Ia T No 0402/44 6.17.44 top secret
Teleprint of Supreme Command Southwest Ia T No 0627/44 6.22.44 top secret

"Re: *Anti Partisan Measures*

"In my appeal to the Italians I announced that several measures are to be taken against the Partisans. This announcement must not represent an empty threat. It is the duty of all troops and police in my command to adopt the severest measures. Every act of violence committed by partisans must be punished immediately. Reports submitted must also give details of counter measures taken. Wherever there is evidence of considerable numbers of partisan groups, a proportion of the male population of the area will be arrested and in the event of an act of violence being committed, these men will be shot. The population must be informed of this. Should troops etc. be fired at from any village, the village will be burned down. Perpetrators or the ringleaders will be hanged in public. Nearby villages to be held responsible for any sabotage to cables and damage inflicted to tires. The most effective counter measure is to recruit local patrols. Members of the Fascist party will not be included in any of the reprisals. Suspects will be handed over to the prefects and a report sent to me. Every soldier will protect himself outside villages by carrying a firearm. District Commanders will decide in which town it will also be necessary to carry firearms. Every type of plunder is forbidden and will be punished severely. All counter-measures must be hard but just. The dignity of the German soldier demands it."

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*See document UK-66, vol. VIII, p. 572-582.

(signed) "Kesselring
Supreme Commander
(High Command 6th Army Group.)
Ia T No 9864/44 top secret."

Sauckel's Slave Labor Activities in Italy

Q. Who was the General Plenipotentiary Chief of Military Administration in Italy, on the 26th of November 1944?

A. On the 26th of November 1944, it was the Governor Doctor Waechter.

Q. Was Doctor Waechter a member of your staff?

A. Yes, he was. On my staff as Plenipotentiary General. He was one of my "pillars" as he was in charge of military administration.

Q. Did Doctor Waechter ever discuss with you the taking of hostages?

A. It couldn't have been hostages. He was concerned with the matter that also concerned Sauckel, the recruiting of Italian workers.

Q. That is what I am talking about, and I now show you a letter which was written by the General Plenipotentiary Chief of Military Administration in your Headquarters in which, in discussing these particular points, he mentioned as follows, and I want you at the end of the reading of this to tell me whether or not you discussed these particular points with Doctor Waechter, and whether these are your opinions as expressed by him on November 26, 1944?

(The document was translated to the witness by the interpreter.)

After having heard it translated thus far, do you remember anything about this order?

A. No. I do not remember this letter, but here is what it suggests to me, looking at the date and noting the contents of this letter; at about that time Sauckel was in Italy. He was concerned with the importation into Germany of Italian workers and was pressing for more and more of such persons to be sent to Germany. Before Sauckel's trip, I had obtained the agreement of the Commander-in-Chief that no more labor would be deported from Italy, as I was opposed to this policy, and Sauckel had come in order to obtain a revision of this prohibition. He had conferences with all the important officials concerned, such as Vietinghoff and Roettiger, and the other members of the General Staff. I was present myself and I developed my views and told Sauckel then that some day—I remember this very vividly—I told him that some day he would have to account for all the bloodshed and all the misfortunes that would come over the German people as a result of similar measures taken, not only in Italy, but in Russia and France and in other countries. I used the word "Menschenfang," and I remember that when we were driving back from this conference Sauckel was very reproachful about my having accused him of "Menschenfang." When we were conferring with Rahn, he brought up this matter again and he asked me never to use this word again. Rahn was very reasonable about this whole matter. He took my side and was instrumental in maintaining the prohibition in effect.

I don't know whether this will interest the Colonel: Himmler had radioed instructions directly to the Commander of the 16th SS Division, and he had done this by by-passing Kesselring, to continue the forcible recruiting of workers for deportation to Germany, and to ignore the order prohibiting it.

It may be that Sauckel had this letter written by his representative Kretschmann, who represented him on the Staff of the Chief of the Military Administration and was in charge of labor problems.

The document reads as follows:*

"HQ/QU .2 "HQ 26 Nov 1944.

"Subject: HOSTAGES

"To: 1A

"With reference to the question of selection of hostages the following information is quoted from a letter of the General Plenipotentiary Chief of Military Administration:

" 'Before anything else I would like to draw your attention to the obviously not always happy choice of hostages by the unit. The units apparently follow the accepted rule always to detain the best known members of the community, although, as opposed to the rest of Europe, the lower classes in Italy are more friendly towards us than the upper classes. It would therefore be to the point to select the hostages from these strongly pro-British circles. It must however be born in mind that any officials of the leading classes are by far preponderantly composed of proven Fascists i.e. such men who, within the Italian theatre are the nearest to being within the spirit of the German-Italian Alliance.

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

" 'I would welcome therefore if it were expressly pointed out to the troops that Fascist officials of the State, Party or community are on one side supporters of German interests, and that on the other hand their arrests as hostages in no way produces the desired impression upon the terrorists.

" 'A suitable conference with the local duty stations of the Military Administration who are fully aware of these circumstances should ease the question of selection of suitable hostages in every case."

"Further a report of the Military Local HQ, Cuneo/Administrative Section attached to the above letter:

" 'Within the last few days the XXV A.K. (Army Corps) ordered the taking of preventive hostages. Amongst others arrested were Community Fascist Secretaries, Industrialists and Managers of important installations whose absence undoubtedly affected production adversely. It takes lengthy intervention to clear up the results of such measures. It has occurred frequently, in the operational area, rearward Army zone, where the troops in accordance with orders have all power of command, and where responsibility is entirely theirs, that Doctors and Chemists have lately been taken as hostages. According to the viewpoint of the Prefecture the medical care of the civilian population is in jeopardy as it has been proved that these persons, should they ever be released after a certain time, leave their domicile, so as to avoid being arrested on a future occasion.

"1a

"(signed) Signature"

Excerpts from Testimony of Karl Wolff, taken at Nurnberg, Germany, 27 October 1945, 1030-1235, by Col. Curtis L. Williams, IGD. Also present: Capt. Mark Priceman, Interpreter; Pvt. Clair Van Vleck, Court Reporter.

Stringent Measures Used Against Italian Partisans

Q. General, on the 18th of December 1944, Field Marshal Kesselring sent out his proposed order applicable to punitive measures against partisans to you and to Ambassador Rahn and asked you to make your comment thereon. I will show you a copy of that proposed order and ask you if you remember receiving it and if you made a reply to that proposal?

A. May I ask this question: Could this not be a misunderstanding? As I recall it, Kesselring at this time was suffering from the consequences of an accident and was in a hospital. I think he only returned to his office in mid-January of 1945.

Q. This is a copy of an order, which was drafted in his headquarters and sent to you and to Ambassador Rahn for your comment. Do you remember receiving that and did you make any comment thereon in reply?

(Whereupon the following was read to the witness by the interpreter:)*

"A Preliminary draft on the application of punitive measures is forwarded below and you are requested to take note of same.

"1. In the event of hostile activities from certain quarters, directed against the German Armed Forces, SS and Police organizations, etc., punitive measures must be taken if justified by the severity of the deed. Punitive measures are not to be applied if it has been possible to apprehend the wrongdoer.

"2. The punitive measures must correspond to the severity of the case and there must be borne in mind that in first applications the severest measures must not be taken so that it remains possible to increase them in the event of further misdemeanors."

A. Reading this far, you see that there is a complete change in policy as compared to that set forth in the order of the 17th of June. This change in policy was the result of many conversations, which Kesselring had had with me, with his Chief of Staff Roettiger, with von Vietinghoff and others.

Q. Dollmann?

A. I would say principally with me and sometimes my advice came to him through my liaison officer, Dollmann. I know that Kesselring had suffered under the weight of the constant pressure to which he was subjected by the OKW to be harsh. There were also people like Goering, who were constantly interfering with his policies; and, on the other hand, he was subjected to pressure from our side, and he himself was not a man who liked these cruel measures. So he was only too happy to be able finally to abolish that old policy and to come around as I have described it yesterday, to a policy which actually was entirely the opposite of what had been done before.

Q. However, the OKW had not, even at this time, changed their former instructions to Kesselring or to his headquarters concerning the treatment which the OKW wanted him to mete out to the partisans, had they?

A. No. This was a result of joint efforts on the part of Kesselring and myself. We worked out this new policy as the ones responsible for the Italian theater.

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*Document referred to did not form part of prosecution case as finally prepared and hence is not published in this series.

Q. It is a fact, is it not, General, that the OKW daily still called on you, urging you to use a more and more stringent policy toward the partisans in Italy?

A. The last order of this kind, that I recall having received as the Plenipotentiary General, came to me in the beginning of August of 1944. It was shortly after the attempted assassination of the Fuehrer. No change in the general policies of the OKW with reference to the combatting of partisans became known to me during the following period. However, I do not recall having received any further orders confirming the old policy, and I do think that those gentlemen back in Berlin at that time were much too busy with so many other things, such as the liquidation of the people who had made the attempt against Hitler's life, and that they had a lot to worry about in connection with the conduct of the war.

Q. You do know that every time that Field Marshal Kesselring or General Roettiger called Berlin by telephone, and asked for additional units for the purpose of using them to combat the partisans, that they were told time after time that the only thing that the Reich Government could furnish them was advice to be more and more drastic in the treatment of those who were operating against the German Army, don't you?

A. Yes, I know that.

Q. And you knew that conversations were held between Keitel and Kesselring, and Keitel and Roettiger, and every time a conversation was held concerning the partisans, Keitel said that you must use more drastic punishment against the partisans, didn't he?

A. Yes; I know it, not because I listened in on those conversations, but because I was told about them by Roettiger, and occasionally by Kesselring, who complained to me about these things.

Q. Coming back to our original question: You do remember receiving this document that was sent to you by Field Marshal Kesselring, outlining his proposed order for the treatment of the partisans in December of 1944; do you not?

A. Yes.

Q. Then, General, on the 29th of December, you replied to Field Marshal Kesselring's previous proposed order to you in the following terms, did you not?

(Whereupon, the document was read to the witness by the interpreter as follows:)*

"Punitive measures may be employed in the event of hostile action on the part of the civilian population. Such acts of violence are, in almost all cases, not merely of local significance, but are previously prepared acts of terrorism carried out by the Patriot Movement of Italian Resistance Circles, which is guarded and supported by the enemy. For this reason, it would appear more practical for the purpose of applying punitive measures not to place the responsibility on Military Administration, such as Military and Civil HQ's, but rather on the organization charged with combatting Partisan operations. It would therefore, in this case, be a question of the officers 1/c Security Measures and the Chiefs of SS and Police. Further it must be borne in mind that punitive measures always have a political aspect and must be carefully weighed and balanced in particular as far as their execution and their repercussions are concerned. The participation of the commander of the Security Police and of the Protective Service in Italy must be assured without fail, since he is the person who is competent for and responsible for political counter-measures. He must also be authorized to apply punitive measures on his own responsibility. Inclusion of his subordinate posts also must be authorized.

"(IV, 1b) In the area of the Supreme Head of the SS and Police Italy, the Officers 1/c Security Measures.

"(IV, 2b) In the area of the Supreme Head of the SS and Police, Italy, the Chiefs of SS and Police, who will have to come to agreement on the necessary measures in close collaboration with the responsible detachments of Security Police and of the Security Service.

"(IV, 2c) The Commander of the Security Police and Security Service.

"(IV, 3b) In the area of the Supreme Head of the SS and Police, Italy for the application of punitive measures under 3b and d the Officer 1/c Security Measures in agreement with the detachment leaders of the Security Police and Security Service Posts concerned.

"(bb) For the remaining measures the Chiefs of SS and Police, in agreement with the relevant subordinate at the Security units of the Security Police and the Security Service.

"(IV, 6b) The choice of hostages must be carefully prepared in conjunction with the existent detachments of the Security Police and Security Service in order to avoid unpleasant consequences and blunders.

"(IV, 7) In the territories of the Chief Commissar the carrying out of punitive measures is always to be agreed upon, case by case, between the GOC Operations Zone Alpenvorland, HQ, LXXXXVII: Corps for Special Duties and the authorative representative of the responsible Security Police Posts in accordance with past instructions. Since punitive measures, in view of their consequences, cannot be considered too carefully, I propose that, also in the areas which are not part of my responsibility, the troops there at that time should, when imposing punitive measures, make it their duty to obtain the participation of the responsible Security Police and Security Service Posts.

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"The modification suggested by me to the effect that individuals of the Commander Partisan organization rather than the Officer of the General Plenipotentiary should be charged with the carrying out of punitive measures, does not of course preclude the participation in local incidents of the then Military and Civil HQ's. For such events the necessary instructions would be sent from here, to enable the military authorities to participate to the extent which is their due.

"The Supreme Head of the SS and Police, Italy 1a/1625/44 SECRET Circular geh.R.S.—Rundschreiben, signed Wolff, SS Obergruppenfuehrer and General of the Waffen SS."

A. Yes; I recognize it now. What I did here was simply to express my agreement with the new policy, and I added for practical reason, the recommendation that a sixty year old gentleman, who was a very fine general but politically rather candid, should not tackle a task which called for an administrator, experienced in police measures, and this is why I recommend that the Supreme SS and Police Chief should be made the executive in this kind of operation.

Q. All of these transactions and discussions between your headquarters, Rahn's headquarters, and the headquarters of Field Marshal Kesselring, were culminated on the 8th of February, 1945, in an order issued by Kesselring's headquarters, outlining his policy as of that date, and thenceforth in regard to punitive measures that were to be taken against the partisans. I want to show you an order dated the 8th of February, 1945, and ask you: Is this not the order issued by Field Marshal Kesselring, which on that date expressed his policy to his subordinate commanders for their action toward the treatment of partisans in Italy from the 8th of February onward?

(Whereupon the document referred to was read by the interpreter to the witness as follows:)*

"GOC in C., Southwest (HQ, Staff, Army Group C); Ia T No. 1680/45; MOST SECRET: HQ, 8th Feb. 45.

"Subject; Punitive Measures.

"1. The unhesitating carrying out of the steps ordered by me for the protection of the life and property of the German Armed Forces against the underhand attacks of the Partisans have borne fruit and brought to light, furthermore, the loyal and friendly attitude of the mass of the Italian people. They have, in full knowledge of the present state of affairs, withdrawn themselves completely from those elements hostile to Germany and to the Fascist State. The struggle against Partisan bands, now proven to be led by the Allied High Command, must be carried on all the more determinedly—a fight which must at the same time have the goal of protecting Italians devoted to Fascism and our cause, from their (the Partisan's) menaces, and softening the bitterness of this strife in a peaceful land. All measures therefore in operations against Partisans are intended to be directed not only against organized bandit groups, but, aided by the Fascist organization, in particular against Partisan circles and persons sympathizing politically with the Partisans. In the spirit of this Field Directive, the instructions and orders, issued by me and hitherto valid, have been drawn up afresh and are as follows:

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"2. The fight against Partisan illegal activities has often resulted in the necessity to give up all punitive measures. In order to avoid mistakes and excesses, it is always essential to assure oneself whether the measures taken have a pacifying result, or whether they merely serve to make the population feel sympathetic towards the misdoers. For the acts of isolated individuals no collective punishment may be imposed except in the case where the whole civilian population supported the deed, either actively or passively. When punitive measures are imposed rapid and permanent solutions are essential. Proved members of the population and in particular of the Fascist Party are definitely to be excluded from all punitive measures.

"III. The following steps amongst others may be taken:

"1. Light: Introduction or extension of the nightly curfew. Confinement to houses. Ban on travellers stopping in a town, periodic closing of hotels, theaters, cinemas, etc., ban on the sale of alcohol for a fixed time.

"2. Severe: Ban on the issue of smokers' ration cards, withdrawal of provisions. Ban on the distribution of wine. Rendering the population responsible for the protection of certain objects (railway lines, bridges, electrical works, news agencies, etc.).

"3. Most Severe. (a) Arrest of relatives of misdoers since it can be generally assumed that they are Partisan suspects or helpers.

"(b) Measures as in 1 and 2 for longer periods.

"(c) Destruction of blocks of houses or quarters of a town, but only if the population has actively supported the Partisans.

"(d) Execution of Partisan suspects or helpers.

"Measures (a)-(d) are therefore applicable in order of severity.

"IV. Empowered to impose punitive measures in general are:

"1. Light punitive measures.

"(a) In an operational area and to a depth of 30 kms. along the coast, an officer with the disciplinary powers of Regt. Comdr.

"(b) In the remaining area, the officer 1/c Security Measures.

"2. Severe punitive measures.

"(a) In an operational area and to a depth of 30 kms. along the coastland, an officer with a Div. Comdr.'s disciplinary powers.

"(b) In the remaining area the Chief of SS and Police, likewise, the Officer comdg. Security Police and the Security Service.

"3. Most severe punitive measures.

"(a) In an operational area to a depth of 30 kms. along the coast an officer with the disciplinary powers of GOC.

"(b) In the remaining region the Chief of SS and Police.

"4. Inasmuch as punitive measures outside the operational area cannot be applied by the officials mentioned under (1)-(3) for instance in the case of partisan operations, the responsible Platoon Leaders must necessarily contact them in order to fix the type and extent of eventual punitive measures.

"5. If there is danger in delay and the situation demands it, an officer with lower disciplinary power than those under IV (1) and (2) may intervene. He cannot, however, in every case render account of the steps he has taken and justify them to his immediate superior without delay. Such cases generally only occur in operational zones.

"6. In the carrying out of punitive measures the assistance should be secured in good time of the Officers of the General Plenipotentiary of the German Armed Forces, Italy, as well as of the competent Security Police and Security Service departments.

"7. In order to prevent bungling, it is once more pointed out that judgment can only be passed by a Permanent Court.

"V. In the territory of the Chief Commissar the carrying out of punitive measures is to be agreed upon from time to time between the offices of the GOC Operations Zone Alpenvorland, the General Commanding for Special Duties LXXXXVII Corps, on the one hand and the Chief Commissar through the competent SS and Police Chief on the other; in accordance with the foregoing instructions the Chief Commissars make the decision.

"VI. The following previous documents concerning punitive measures are hereby cancelled:

"G.O.C. in C. South/Chief Q.M./Q.M. 2 No. 22785/43, SECRET of 8th Oct./43. G.O.C. in C. South/Ic. No. 6917:43 MOST SECRET of 10th Oct/43 and G.O.C. in C. Southwest/Ia T.No. 0864:44 MOST SECRET of 29th June/44.

"Signed: Kesselring, Field Marshal."

A. Yes; I remember this order.

Q. As you have testified before and as these orders clearly illustrate, Field Marshal Kesselring had reversed his policy toward the punitive measures that were to be taken against partisans in Italy, when you compare this order to that order of the 17th of June 1944, didn't he?

A. Yes, indeed.

Q. What caused that change in policy other than your alleged conversations with Field Marshal Kesselring?

A. The operations that were initiated in June of 1944 had a definite military character and as General Roettiger already stated, quite a shock resulted from the first application of really stringent measures in this very cruel and not very fair fight. These Italians were really very cowardly and as long as they thought that the Germans were soft people, who would let them get away with it, they perpetrated all sorts of attacks against us, but once they discovered that we would give no quarter, their attitude changed. Another consideration was also our own difficult situation. We did not have too many troops to spare for these operations and thus the Supreme Commander realized that if he left these operations up to competent people, who due to their training and their speciality were suited for this sort of police operations, he would get better and cheaper results. May I add that in the beginning of May 1944 I had an audience with the Pope. I took this step entirely on my own, of course, without any instructions from either Hitler, Himmler, or Ribbentrop. This was quite an unprecedented move on the part of an SS Chief and had never happened before. I told the Pope on this occasion that I had been, and was willing to give all the assistance to the Catholic Church I could, and, actually, I had engaged the help of Cardinals and Bishops in my territory in bringing the local populations to their senses. The truth of this statement of mine has already been checked and established by the 209th British Interrogation Center at Rome. It had been agreed between the Pope and myself that these conversations would be treated as confidential. In fact, if we had not lost Rome and I had been able to continue these conversations, undoubtedly our surrender would have come about much sooner in a much more orderly manner. I am mentioning this desire of the Pope's to have this matter treated confidentially because I want to ask you, if this be possible, to respect the confidential nature of this audience of mine with the Pope, as it might be embarrassing for the Pope if any publicity were given to the matter.

Q. Isn't the main reason that Field Marshal Kesselring and the other organizations in Italy decidedly reversed their policy toward the treatment of partisans the fact that you found out through your harsh treatment of them during the months of June, July, August, September, and October of 1944, that such stringent measures, as you had then applied, did not pay?

A. I suppose this may have had something to do with it, but Kesselring and Roettiger should be asked about that. I had always maintained my view, which was that we should be fair and decent.

Q. Isn't it a fact, that late in 1944, a member of your staff and Field Marshal Kesselring's staff were placed together in order to comment upon the order which I have just previously shown to you, as proposed by Field Marshal Kesselring, and ask you if this conversation didn't occur between them?

A. Yes, of course. Whenever any agreements were reached between our respective headquarters and a policy had been agreed upon, the specialists or special staff members concerned would get together and work out the details, would formulate the new policies, as neither Kesselring nor myself had the time to do that work ourselves.

Q. I will ask you if your staff officer didn't discuss that proposed policy in the following words:*

"Hereby the principle of taking hostages must be abolished altogether. We cannot take hostages in an allied country. We must even avoid that word on all occasions. Besides, experience in other vanquished countries has shown that the method of taking hostages only expiates heaviest damage to the German interest. Hostage measures drive even well-wishing parts of the population to the enemy's camp and lead to the greatest unrest in the rear of the fighting troops and harm, because of unavoidable damage to German respect. When sentencing persons within the frame of punitive measures, it must be established, at least formally, that they were sentenced to death for assistance to partisan units, desertions, and so forth. The word 'hostage' is sufficient to provoke politically negative sentiments of sympathy among the population."

A. Yes, but I did not start preaching this in December. I had been preaching this all along and Field Marshal Kesselring could testify to it, also Rahn and Roettiger.

Q. He had not listened to your preaching previously to this date, had he?

A. The bad mistake that Kesselring committed was that he issued his order of the 17th of June while I, the competent man in this matter, was taking my cure at Karlsbad. When I returned, I was able to convince him that the measures which he had ordered were not right, but you must realize that it is hard for a Field Marshal, who is 16 years older than I am, to admit to his subordinate that he has been one hundred percent wrong. I have already told you that we agreed in principle that this policy had to be changed, but we couldn't make a hundred and eighty degree turn right away. We had to do it gradually. This is what we had agreed upon and this is what we did.

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Q. It took Field Marshal Kesselring from June the 17th, 1944 until February the 8th, 1945 to be convinced that his previous policy was wrong and that he should turn around and absolutely reverse himself in his action towards the partisans; is that right?

A. No. This was not so. Changes in this policy were made as early as July and August. You must consider that poor Field Marshal Kesselring was constantly subjected to pressure from Hitler and Keitel. Take, for example, the paragraph in the order which you just read to me, which states that in particularly serious cases, hostages may be taken and executed. This was only a concession to instructions from Berlin. Actually, we didn't mean to do any such thing and I say again that so far as I was concerned, and in my execution of these policies, I always used fair and mild measures.

Q. It makes no difference to me what Field Marshal Kesselring had in his mind between June the 10th 1944 and the 8th of February 1945. The facts are as shown by the orders which he issued, that he did not change his stringent, drastic, cruel treatment of the partisans in Italy from the first date mentioned until the last date mentioned, are they not?

A. There must be an order, which came out on or about the 20th of August, and which has not been shown to me here as yet, which constituted the first temporizing measure in the policies of Kesselring in his fight against the partisans. In fact, if you look again at your reports on atrocities committed, and if you compare the dates, you will undoubtedly notice that after, or shortly after that approximate date, there was a noticeable drop in the number of such atrocities. Of course, it takes some time when new instructions are issued for the effects to be felt. You must also consider, apart from written orders, the many personal conversations and discussions, which took place all along. Also if my representative was able to express the opinions that you quoted a few minutes ago in December, that shows that all these things were under consideration during that period and that the change in our policy was really not as sudden as it may appear, when one considers only the fact that there was an order of the 17th of June and then another one of the 8th of February.

Q. You are going to admit, are you not, that the reason for the change of this policy and the reversal of the attitude of Field Marshal Kesselring and your headquarters was because you had found that it didn't pay to be cruel to people whose country you were occupying?

A. Yes, of course, this was one of the reasons and I don't deny that it was one of the most important ones, but a decision is not made without considering all factors, and there were a number of circumstances which brought it about.

Q. A moment ago, you mentioned to me that you felt that in August of 1944 Field Marshal Kesselring must have issued an order, which showed a change in his policy in regard to his action towards the partisans.

A. Yes.

Q. I have an order, which was issued by Field Marshal Kesselring's headquarters on the 21st day of August 1944 and I want to read it to you and see if you think, after reading it, that he had changed his policy in treating the partisans from that policy as announced on the 17th of June 1944. This order, which I am showing to you, is addressed to all of the major units under the command of Field Marshal Kesselring and it reads:*

"In connection with operations against partisans, and larger scale actions against same, incidents have occurred within the last few weeks, which caused the greatest harm to the dignity and discipline of the German armed forces, and which had nothing to do with punitive measures."

What do you think Field Marshal Kesselring meant when he said "Incidents have occurred within the last few weeks, which have caused great harm to the dignity and discipline of the German Armed Forces, and which had nothing to do with punitive measures"?

A. What he had in mind were the atrocities and excesses committed in the execution of the instructions, which he had been forced to publish. Kesselring never intended to instruct the German soldier to commit any actions which would have been detrimental to his dignity and honor. Unfortunately, it could not be avoided, that after these instructions had been issued, they would be misinterpreted and that cases would occur where the persons involved would abuse the leeway which had been given them. You must consider that the basic order had been issued at a time when everybody was most indignant about the activity of the partisans and, accordingly, under high pressure. Later on, I did not have much trouble in convincing Kesselring that this was extremely dangerous and that we had to do something about it. Here you see the first step, which he took to counteract any such excesses and misinterpretations of his instructions.

Q. I shall continue reading:

"As operations against partisans should be conducted with all means available, no innocent elements are affected by same."

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Does he not realize there that innocent people are affected by these raids? He still says that they must use all means available against the partisans.

A. It is unavoidable in any kind of war and, of course, in a war against bands of partisans, that from time to time, innocent bystanders are affected.

Q. I want now to read to you a letter, which was addressed by Ambassador Rahn to all the officers of the Propaganda Section of every Regiment on the Italian front, during the month of December 1944; and ask you if you did not, as Commander-in-Chief of the Police in Italy, receive a copy of this letter and what action or what comment did you make thereon?

A. May I ask this question? Are you speaking about the National Socialist Party representatives in the regiments?

Q. I am speaking of a letter, which was addressed by Ambassador Rahn to all the officers of the propaganda section of every regiment on the Italian front.

A. May I ask you to tell me what the contents of this letter is?

Q. Yes; I am going to read it to you now.*

"I am perfectly conscious of the sentiment of violent aversion nourished by the German soldiers against the Italians, including those Italians who, for one reason or another, continue to fight on our side. This negative attitude damages our war effort. It is an emotional impulse, which must be better hidden. I shall thereby be very grateful to the officers, to whom this letter is addressed, if they would pay more attention to this and if they would see to the attitude of their men. It is necessary to organize some lectures in which it is explained what benefits Germany has received from the false political reconstruction of Fascist Italy. They must be reminded that the first objective is to mobilize all the strength and productive potentialities of the part of Italy occupied by us in order to lighten German needs. Everything in occupied Italy must be exploited by us for our war effort. This is our opportunity, for we can avail ourselves of the advantage of the concentrated hate that almost all Italians have for their Republican Fascist Government. By using our intelligence we can turn this hate to our favor.

"During the first months after 8 September '44, the German armed forces succeeded in representing the only legal authority in occupied Italy; therefore, many Italians turned to us in their difficulties. This political good luck has facilitated our work but lately our position, among other things also the Italians; has become worse owing to the acts of violence and reprisals committed by our soldiers against the civilian population. Field Marshall Kesselring's order, dated the 2d of August, 1944, specifies clearly that the indiscriminate reprisals against the civilian population, rather than against the patriots, diminishes the trust of the population in the German armed forces, and furnishes excellent propaganda for the enemy. These acts on the part of the German troops, even if justifiable, must diminish. It is very urgent to change our behaviour, not for humanitarian considerations, but in cold calculation that this is the best way to take care of the interests of the German war effort in Italy.

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"Therefore, the German soldiers' attitude toward the Italian population is decidedly important. Whether we hate the Italians or not is of no importance. The important thing is that we must obtain from Italy everything possible for our war effort. After five years of war, we cannot give ourselves to the luxury of spoiling favorable situations, just to satisfy our emotions. Our sentiments must be held in check, at least for the moment. It is better to satisfy our hate and aversion at the right moment, taking into account particular circumstances of military nature. We must pretend the greatest friendship possible and act without mercy once it is no longer necessary to hide our real sentiments."

A. I do not remember this letter.

Q. Do you know if these were the true sentiments of Ambassador Rahn in December of 1944?

A. I can't answer this question with just yes or no. It is necessary for me to describe Rahn in order to clarify this matter.

Q. Go ahead.

A. Rahn is a career diplomat and one of the new brand, very gifted with a lot of ideas and imagination. He takes great delight occasionally in reaching his objectives with the help of Jesuitic means. I have observed on many occasions that whenever he wanted to get Hitler, or the Army chiefs, or Mussolini, or Ribbentrop, or anybody else to agree to a certain measure, he would deliberately represent himself as worse than he was. He would assume the position of a Jesuit, whose only consideration is the goal, and who does not care what means are used. The Colonel asked me whether I knew whether this was Rahn's opinion. As the Political Plenipotentiary of the Great German Reich, Rahn was in those days the recipient of a great many complaints from the Duce and other Italian dignitaries about excesses and incidents. For that reason he felt that he had to do something about the education of our troops in this respect. I know that considerable difficulties resulted for Rahn in his dealings with the Duce and the Italian Government from the existing mutual dislike of the Germans for the Italians and of the Italians for the Germans. As Rahn considered himself responsible for making the best of war production in Italy, he thought that he had to consider that matter in connection with this task of his. I would like to mention that whenever Rahn felt that he had to use one of these immoral

Jesuitic tricks, he would say to himself: "I have to act as the advocatus diaboli—the devil's advocate."

Q. Do you remember on July the 10th 1944 that you received an order from Dr. Lokotsch, who was Oberstrichter, and which read as follows:*

"The Fuehrer has ordered that with immediate effect, no further proceedings will be taken by military courts against the civilian population in occupied countries on account of acts of terrorism and sabotage against the German occupational forces. Accordingly, no cases already under consideration will be brought to trial. New orders for troops and courts will follow. The judge is to be informed that any necessary order should be issued to subordinate units."

A. No; at that time I was not the Plenipotentiary General so that I would not have been on the distribution list of this order.

Q. On January the 12th, 1945, what position did Tensfeld hold in your command?

A. He was the SS and Police Chief in Upper Italy, in the Western part of Upper Italy. His territory included the provinces of Lombardy, Liguria, and Piedmont. In other words, it included the triangle Milan, Torin, and Genoa.

Q. Would a copy of the orders that were issued by Tensfeld be sent to your headquarters, as a part of his normal distribution?

A. No; unless it was something of prime importance and meant a fundamental decision, in which case I, as the Supreme SS and Police Fuehrer, had to be informed; otherwise, he took his decisions and issued his orders independently.

Q. SS Brigadefuehrer Tensfeld on the 12th of January 1945 issued an order, and paragraph 9 of that order reads as follows, with the heading of "Tribunals of Security Commanders":*

"I have reason again to draw your attention to the following:

"Any execution through shooting of persons as a reprisal, must be preceded by a judgment of a tribunal, which has been formed by order of the local Security Commander. I don't think it is necessary to emphasize that only such persons will be picked, who at any rate, would have lost their lives according to battle rulings. The persons will best be picked by the local Police Commander in collaboration with the Security Police. It is in such a way that the outside appearance of a lawful condemnation is being kept up. The population will be notified by posters that the execution has taken place as a reprisal. It has to be said that the respective people have been condemned to death."

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Did you ever receive a copy of the order containing this paragraph; and if you did, what was the meaning of it?

A. No.

Q. You know that the Security Police ordered the formation of all the local courts, don't you?

A. Yes.

Q. And that all persons who were captured as commandos, or as partisans, were to be turned over to the Security Police, weren't they?

A. Yes.

Q. Do you know the action that the Security Police took in connection with all commandos that were captured?

A. Yes.

Q. What was that action?

A. Each case was investigated thoroughly and wherever any guilt could be proven, the case would be submitted to an SS and Police Court, or to a military tribunal.

Q. You are now talking about commandos. Was that the action that was required concerning them?

A. This procedure applied to everybody.

Q. I show you an order from the OKW, dated the 18th of October 1942 and ask you if you ever saw that order, and if you did not operate under the authority contained therein in Italy, in 1944?

A. No. In 1942* I had not been in Italy and in any case, we never had an occasion in Italy to comply with such an order.

Q. I will ask you in that connection if you ever heard of 13 American soldiers, 11 enlisted men and two officers, being executed under the direct authority contained in this order in Italy, which execution took place in the year of 1944 and was ordered and carried out by General Dostler?**

A. I hadn't heard about it at the time when it happened. I was informed of it while I was a prisoner.

Q. Do you know under what authority General Dostler alleged that he executed those thirteen American commandos in 1944, near La Spezia, Italy?

A. He claimed to have consulted the army group, through the army, and I believe the question was passed on to the OKW and eventually the execution took place on the basis of this order of the 18th of October 1942.

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*See document 498–PS, vol. III, p. 416.

**See document 2610–PS, vol. V, p. 330.

BIOGRAPHICAL INDEX OF PRINCIPAL PERSONS REFERRED TO IN THE INTERROGATIONS

[In the following data German titles and offices have been translated into English, wherever possible. Likewise, the English rather than the German spelling of Christian names has been adopted. In the case of military or para-military (i.e., SS or SA) personnel, the highest rank attained is given, and no attempt has been made to trace the dates of promotions. It should be noted in this connection that the German system of military ranks differs from the American, and that while both systems have several ranks in common, these ranks are not exact equivalents when considered in their respective hierarchies. For example, a German Lieutenant General is equivalent in rank to an American Major General. For further information on this question, see Table of Commissioned Ranks in the Germany Army, Navy, and SS, with Their Equivalents in the American Military Forces, Vol. II of this series, p. 1099. For explanation of German phrases, as well as abbreviations, see Glossary of Common German and Nazi Titles, Designations, and Terms, with Their Official Abbreviations, Vol. II, p. 1084–1098. For further biographical information, see Biographical Data on Principal Officials of Reich Government, Nazi Party, and Armed Forces, Vol. II, pp. 1055–1077.—Ed.]

ABETZ, Otto—German Ambassador to the French Government headed by Petain at Vichy; Foreign Office representative at headquarters of German Commander-in-Chief in France during occupation. pp. 1217–1220, 1491.

ALVENSLEBEN, Bodo Count von—Member of a famous Prussian aristocratic family; president of the Herrenklub (Berlin), 1932. p. 1452.

AMANN, Max—Hitler's company sergeant during World War I who became business manager of the Nazi Party in 1921; participated in Munich beerhall putsch of 1923 and was imprisoned; when Hitler came to power in 1933, was appointed Reich Press Leader and President of the Reich Press Chamber, which made him virtual dictator of whole German press; as head of Zentral Verlag, Franz Eher Nachf. (central publishing house of the Nazi Party) and subsidiaries, controlled world's largest press and publishing combine; member of the Reichstag. pp. 1521–1532.

ANTONESCU, Marshal Ion—Iron Guard Leader who was Nazi-backed dictator and Prime Minister of Rumania from 1940 until 1944, when King Michael dismissed him; (not to be confused with Mihai Antonescu, Rumanian lawyer and former delegate to anti-Comintern meeting in Berlin who was Rumanian Deputy Prime Minister, 1942-1944); both Antonescus were executed on 1 June 1946 in Bucharest. p. 1206.

BALDWIN, Stanley (1st Earl of Bewdley, Viscount Corvedale, 1937)—British Conservative Party leader who was Privy Councillor, 1920; President of the Board of Trade, 1921–1922; Chancellor of the Exchequer, 1922–1923; Prime Minister and First Lord of the Treasury, 1923–1924, 1924–1929 (succeeded by MacDonald), and 1935–1947 (succeeding MacDonald, and succeeded by Chamberlain); Lord President of the Council, 1931–1935; Lord Privy Seal, 1932–1934. pp. 1175, 1214, 1248, 1249.

BALFOUR, Arthur James (1st Earl of Balfour, 1922)—British author and Conservative Party leader who was First Lord of the Treasury and Lord Privy Seal, 1902; Prime Minister (succeeding Lord Salisbury, his uncle), 1902–1905 (succeeded by Campbell–Bannerman); First Lord of the Admiralty (succeeding Churchill) in Asquith cabinet, 1915; Secretary of State for Foreign Affairs in Lloyd-George cabinet, 1916–1919, and in this capacity, in November 1917, promised on behalf of the British Government to provide a national home for the Jews in Palestine after the war ("The Balfour Declaration"); British Delegate to the Paris Peace Conference, 1919; Lord President of the Council, 1919–1922; British Delegate to Washington Conference 1921–1922; died in 1930.. p. 1425, 1426.

BARTHOU, (Jean) Louis—Premier of France and Minister of Public Instruction, 1913; Minister Without Portfolio in Painlevé's World War I cabinet; Minister of War in Briand's cabinet, 1921; Senator, 1922; Vice Premier and Minister of Justice in Poincaré's cabinet, 1926; as Foreign Minister, 1932, foresaw Nazi menace and initiated Franco-Soviet Pact; assassinated with King Alexander I of Yugoslavia at Marseilles, 9 October 1934. p. 1175.

BECK, Col. Jozef—served in Pilsudski's Polish Legion in World War I and was Chief of Staff to Marshal Pilsudski; Military Attache at Polish Embassy in Paris, 1922–1923; Foreign Minister of Poland, 1932–1939; and in pursuing generally anti-French policy negotiated and signed Non-Aggression Pact with Germany, 1934; after invasion of Poland fled to Rumania and lived in retirement until his death in June 1944. p. 1104.

BECK, Col. Gen. Ludwig—Chief of the German General Staff, 1935–1938, who resigned because of disagreement with Hitler's agressive policies during the Sudeten crisis in the summer of 1938; chief military leader of the anti-Nazi underground, who was to become Chief of State of Germany if 20 July 1944 plot against Hitler succeeded; after failure of plot was forced by Fromm to commit suicide on night of 20 July 1944. pp. 1090, 1270, 1548–1551, 1554, 1555, 1559, 1560, 1568, 1570.

BELOW, Col. Nikolaus von—Air Force aide-de-camp to Hitler who remained at the Fuehrer's Headquarters in the air-raid bunker in Berlin during Hitler's last days, April 1945. p. 1280.

BENES, Eduard—Czechoslovakian Minister for Foreign Affairs, 1918–1935; Premier, 1921–1922; President 1935–1938; President of Czech Government-in-Exile in London, 1939–1945; returned to Czechoslovakia and resumed office as President after liberation in May 1945. p. 1501.

BERGER, Gottlieb—SS Obergruppenfuehrer and General of the Waffen SS; Chief of the Central Office of the SS; Head of the SS Prisoner of War Administration and Inspector General of Prisoners of War; Head of Policy Division of Reich Ministry for the Occupied Eastern Territories. pp. 1320, 1321, 1533, 1534.

BERNADOTTE AF WISBORG, Folke Count—nephew of King Gustav V of Sweden; member of Committee for International

Relief Work, 1944; as Vice President of Swedish Red Cross visited Germany to negotiate release of Danish and Norwegian prisoners in early spring of 1945; acted thereafter as intermediary in abortive attempts of Himmler and Schellenberg to make peace with the Western Allies, and transmitted Himmler's offer to Eisenhower. pp. 1596, 1632.

BETHOUART, Gen. Emile-Marie—Commander of French forces during Norwegian campaign, April–June 1940; as commander of division stationed near Casablanca cooperated with Anglo-American forces during landing in North Africa, November 1942, and was arrested for refusal to obey orders of Vichy Government to resist; Gen. Giraud's liaison officer with Allied Commanders in Chief following North African landing; head of Casablanca Military Mission, 1943; Chief of Staff for National Defense in Algiers Government, 1944; Commander of 1st Army Corps, 1st French Army, September 1944; Commander-in-Chief of French Occupation Zone in Austria, July 1945. p. 1545.

BIDDLE, Col. Anthony J. Drexel—United States Minister to Norway, 1935–1937; Ambassador to Poland, 1937–1939; accompanied Polish Government in move from Warsaw to other temporary capitals after invasion, 1939; American Deputy Ambassador to France at fall of France and followed French Government to Tours and later Bordeau capitals, 1940; Ambassador to Government-in-Exile of Poland, Belgium, Norway, the Netherlands, Yugoslavia, and Czechoslovakia, 1943–1944; retired from diplomatic service, January 1944, and entered U. S. Army on Eisenhower's staff at SHAEF. p. 1195.

BISMARK-SCHOENHAUSEN, Prince Otto Eduard Leopold von—Minister President of Prussia, 1862–1871; created unity of German states proclaimed as new German Empire under William I, at Versailles, 1870, after defeat of France in Franco-Prussian War; Chancellor of Imperial Germany (the "Iron Chancellor"), 1871, and served until his dismissal after accession of William I in 1890; died in 1898. p. 1189.

BLASKOWITZ, Col. Gen. Johannes—Commander of German invasion armies in Austria and the Sudetenland, 1938; Commander-in-Chief of the German Army in Poland, 1939, and resigned in protest at SS interference; Commander of the First Army in France with Headquarters at Bordeaux, 1942. p. 1574.

BLOMBERG, Field Marshal Werner von—Hitler's Minister of War from 1933 until 4 February 1938, when he was dismissed after a Nazi-engineered frameup and Hitler assumed Supreme Command of the Armed Forces. pp. 1087, 1089, 1100–1102, 1111–1113, 1152, 1458–1460, 1466, 1499.

BOEHM, Admiral Hermann—Commander of German "non-intervention" fleet in Spain, 1936; admiral in command in Norway, 1940–1943. p. 1545.

BOEHME, Maj. Gen. Hermann—Chief of Staff, German Armistice Commission in France 1940–1943. pp. 1576, 1577.

BOEPPLE, Ernst—Under Secretary in the General Government of Poland; formerly deputy head of Bavarian Ministry of Education. p. 1375.

BOHLE, Ernst Wilhelm—Under Secretary in the German Foreign Office; head of the Foreign Organization of the Party; SS Obergruppenfuehrer. p. 1168.

BOHR, Niels—Professor of Theoretical Physics at University of Copenhagen since 1916; Director of Institute of Theoretical Physics in Copenhagen since 1920; winner of Nobel Prize in Physics, 1922; on of pioneers in research on atomic fission. pp. 1624, 1629.

BORIS III—King of Bulgaria during period when Bulgaria was adherent to the Tripartite (Axis Pact) and an ally of Germany; died in 1943 after reigning since 1918. p. 1640.

BORMANN, Martin—Head of the Party Chancery and Secretary of the Fuehrer (succeeding Hess in 1941); Reichsleiter and Reichsminister; member of the Ministerial Council for the Defense of the Reich; member of the Reichstag; SS Obergruppenfuehrer; appointed Party Chancellor in Hitler's political testament, 29 April 1945; missing and rumored killed in attempt to escape from Berlin, 2 May 1945. pp. 1120, 1135, 1145, 1203, 1222, 1275, 1276, 1297, 1298, 1334, 1336, 1337, 1358, 1381, 1515, 1633, 1645.

BRACHT, Heinrich—Mayor of Essen and Center Party leader who succeeded the Social Democrat, Carl Severing, as Prussian Minister of the Interior during the crisis of 20 July 1932. p. 1462.

BRANDT, Heinz—Press Leader for the Gau Oberschlesien; SS Obersturmfuehrer; (not to be confused with Prof. Dr. Karl Brandt, SS Obergruppenfuehrer and Reich Commissioner for Health and Medical Services). pp. 1125, 1127, 1129.

BRAUCHITSCH, Field Marshal Walter von—Commander-in-Chief of the German Army (OKH) from February 1938, when he succeeded von Fritsch, to December 1941, when after the defeat before Moscow he was dismissed by Hitler, who himself assumed personal command of army operations. pp. 1543, 1549, 1550, 1552, 1553, 1562–1567, 1569–1572, 1574, 1575.

BRAUER—Foreign Office Representative in Norway, with rank of Minister, during occupation by Germany. pp. 1542–1544.

BRAUN, Eva—Hitler's companion, whom he married in the air raid bunker in Berlin early in the morning of 29 April 1945 and with whom he committed suicide the following afternoon. p. 1294.

BROCKDORFF-RANTZAU, Col. Gen. Erich von—Commander of the Potsdam Division and a participant in the early (1938) plotting against Hitler. pp. 1552, 1553.

BRUECKNER, Wilhelm—SA Obergruppenfuehrer; led the "Munich Regiment" in the 1923 putsch and was imprisoned; in 1930 became Hitler's personal adjutant and was one of Hitler's closest entourage for many years before the war; member of the Reichstag. p. 1399.

BRUENING, Heinrich—Leader of the Catholic Center Party who was Chancellor of Germany, 1930–1932; escaped to the United States during the Roehm crisis of June 1934. pp. 1412, 1449, 1459.

BUEHLER, Josef—Under Secretary and Deputy to the Governor General of Poland (Hans Frank) and head of government in Cracow, 1939; Ministerialdirektor in Ministry of Justice, 1944. pp. 1369, 1375, 1376, 1381.

BUERMANN, Gen.—Representative of the Wehrmacht (OKW) in Poland during the German occupation. pp. 1382, 1400.

BULLITT, William C.—United States Ambassador to the Soviet Union, 1933–1936; to France, 1936–1940. pp. 1195, 1492.

BURGDORF, Lt. Gen. Wilhelm—Successor to Schmundt as Chief Military Aide-de-Camp to Hitler, and Chief of Personnel Division of Army (OKH), July 1944–1945. pp. 1257–1259, 1261–1270.

BUSCH, Field Marshal Ernst—Commander of German 16th Army which, after taking part in the Western Campaign, participated in invasion of Russia on northern sector, June 1941. p. 1282.

CANARIS, Admiral Wilhelm—Chief of Bureau of Foreign Abwehr (Intelligence Section of OKW) until 1944 when he was dismissed and the Abwehr was absorbed into the RSHA; although Anti-Nazi, had not actually joined the underground movement but secretly frustrated Hitler's orders for conduct of warfare contrary to laws of war; arrested by the Gestapo after failure of 20 July 1944 attempt and executed by strangulation with piano wire at Flossenburg concentration camp in early 1945. pp. 1316, 1317, 1551–1555, 1568, 1573, 1574, 1612, 1613, 1615, 1617.

CARLS, Admiral Rolf—Commander-in-Chief of German Naval Group "East" from 1938 until September 1940, when he became Commander-in-Chief of Naval Command "North"; took decisive part in battle for Baltic Isles, 1940–1941. pp. 1439–1441.

CHAMBERLAIN, Rt. Hon. (Arthur) Neville—British Conservative Party leader who was Postmaster General, 1922–1923; Paymaster General, 1923; Minister of Health, 1923, 1924–1929, and 1931; Chancellor of the Exchequer, 1923–1924 and 1931–1937; Prime Minister and First Lord of the Treasury, 1937–1940 (succeeding Baldwin); signed Munich Pact, September 1938; Lord President of the Council, 1940; died 7 November 1940. pp. 1216, 1251–1254, 1483, 1554, 1558, 1562.

CHURCHILL, Rt. Hon. Winston Leonard Spencer—British writer and Conservative Party leader who was President of the Board of Trade, 1908–1910; Home Secretary, 1910–1911; First Lord of the Admiralty, 1911–1915; Chancellor of the Duchy of Lancaster, 1915; Minister of Munitions, 1917; Secretary of State for War, 1918–1921; for Air, 1918–1921; for Air, 1918–1921; for the Colonies, 1921–1922; Chancellor of the Exchequer, 1924–1929; First Lord of the Admiralty, 1930–1940; Prime Minister, First Lord of the Treasury, and Minister of Defence, 1940–1945; was defeated and became leader of the opposition, July 1945. pp. 1250, 1425.

CONTI, Dr. Leonardo—Reich Health Leader; Under Secretary anl Chief of Health Divisions in Ministry of Interior; Chairman of numerous medical organizations; SS Obergruppenfuehrer; was physician to Nazi "martyr," Horst Wessel; committed suicide in Nurnberg prison, October 1945. p. 1590.

COUGHLIN, Rev. Charles Edward—Roman Catholic priest and pastor of the shrine of the Little Flower, Royal Oak (Detroit) Michigan, since 1926; known for radio sermons on communism, labor conditions, etc. p. 1423.

DALADIER, Edouard—Prime Minister of France, 1938–1940; signed Munich Pact, September 1938. pp. 1217, 1219, 1558.

DARRE, WALTER—Reich Minister for Food and Agriculture; Reich Leader for Peasantry; SS Obergruppenfuehrer; on "long leave" from 1942 (succeeded by Herbert Backe, acting). p. 1152.

DAVIS, Norman H.—United States Ambassador-at-Large and Observer at League of Nations, 1933–1938; American representative at Geneva Disarmament Conference, 1934. p. 1503.

DIETL, Col. Gen. Eduard—Commander of the German 20th Army (mountain), operating in Northern Finland on the Murmansk front. pp. 1545, 1546.

DIETRICH, Otto—Reich Press Chief; Under Secretary and Chief of Press Divisions in Reich Ministry of Propaganda; SS Obergruppenfuehrer; not to be confused with Josef ("Sepp") Dietrich, SS Oberstgruppenfuehrer commanding the Leibstandarte "Adolf Hitler," and later the 1st SS Panzer Corps; organizer of the Waffen SS). p. 1232.

DIRCKSEN, Herbert von—German Ambassador to Soviet Union, 1929–1933; to Japan, 1933–1988; to Great Britain (succeeding Ribbentrop), 1938–1939. p. 1216.

DOENITZ, Grand Admiral Karl—Commander of the German U-Boats, 1935–1943; Commander-in-Chief of the Navy (succeeding Raeder), 1943–1945; appointed Reich President, Supreme Commander of the Armed Forces, Minister of War, and Commanderin-Chief of the Navy in Hitler's political testament, 29 April 1945; as Hitler's successor, headed the short-lived Flensburg Government which capitulated on 7 May 1945. pp. 1087, 1113, 1222, 1250, 1266, 1275, 1276, 1281–1283, 1632.

DOHNANYI, Hans von—Former Justice of the German Supreme Court who was chief assistant to Oster in the Abwehr; a member of the anti-Nazi underground; arrestel by the Gestapo in 1943 and executed at Sachsanhausen concentration camp in April 1945. p. 1568.

DOLLFUSS, Engelbert—Chancellor of Austria from May 1932 until his assassination by Otto Planetta, acting for the Nazis, in Vienna, July 1934. pp. 1145–1150, 1474, 1492, 1505.

DOLLMANN, Eugen—SS Sturmbannfuehrer (Colonel); head of Gestapo in Rome and SS representative at Mussolini's Headquarters. p. 1664.

DOSTLER, General of Infantry Anton—Commander of the 75th German Army Corps in Italy; tried and found guilty by a U. S. Military Commission, on 12 October 1945, and executed, for having ordered the summary shooting of 15 American prisoners of war captured near La Spezia on 24 March 1944. p. 1677.

EDEN, Rt. Hon. (Robert) Anthony—British Conservative Party leader who was Parliamentary Under Secretary in the Foreign Office, 1931–1933; Lord Privy Seal, 1934–1935; Minister without Portfolio for League of Nations Affairs, 1935; Secretary of State for Foreign Affairs in Baldwin and Chamberlain cabinets, 1935–1938 (succeeded by Halifax); Secretary of State for Dominion Affairs, 1939–1940; Secretary of State for War, 1940; Secretary of State for Foreign Affairs in Churchill cabinet, 1940–1945; leader of the House of Commons, 1942–1945. p. 1489.

EDWARD, VIII (WINDSOR)—King of England, acceding to the throne on the death of his father, George V, on 20 January 1936; abdicated on 10 December 1936 to marry Mrs. Wallis Warfield Simpson; succeeded by his brother, the Duke of York, who became George VI; took title of Duke of Windsor; Governor of Bahamas, 1940–1945. p. 1214.

EICHE—SS Obergruppenfuehrer and Commander of Concentration Camps (succeeded by Gluecks). p. 1581.

EICHMANN, Adolf—SS Obersturmbannfuehrer; Chief of Amt IV B 4 of the RSHA (Gestapo section charged with "Jewish affairs," i. e., extermination). p. 1604.

EIGRUBER, August—Appointed Reich Governor and Nazi Gauleiter of Oberdonau (Austria) in May 1938 after taking a prominent part in pre-Anschluss Nazi agitation in Austria; Obergruppenfuehrer in SS and SA; member of the Reichstag. p. 1320.

EISENHOWER, General of the Army Dwight David—Chief of Staff of United States 3d Army, 1941; Assistant Chief of Staff in charge of Operations Division of War Department General Staff, 1942; Commander of European Theatre of Operations, 1942; Commander-in-Chief of Allied Forces in North Africa, November 1942–1944; Supreme Commander of Allied Expeditionary Force in Western Europe, 1944–1945; Commander of American Occupation Zone of Germany, 1945; Chief of Staff of U. S. Army, 1945–1948. pp. 1283, 1428.

ELTZ und RUEBENACH, Paul, Baron von—Reich Minister for Posts and Transport who refused the Golden Party Emblem and resigned in January 1937 because of Hitler's attacks on the Christian Church. pp 1450, 1451, 1455.

EPP, Lt. Gen. Franz, Ritter (Knight) von—Head of Colonial Policy Office of Nazi Party Directorate; Reich Governor of Bavaria; SA Obergruppenfuehrer; member of the Reichstag; started Hitler on his political career and participated in the 1923 beerhall putsch in Munich. pp. 1362, 1557.

FALKENHORST, Col. Gen. (Paul) Nikolaus von—Commander of German 21st Army during Polish campaign, 1939; Commander-in-Chief of German Armed Forces in Norwegian invasion and occupation, 1940; Commander-in-Chief of German Army in Finland, 1941; resumed command in Norway, 1942; relieved of command in Norway, January 1945. pp. 1289, 1290, 1534–1547.

FAUPEL, Wilhelm—German Ambassador to Spanish National

Government (Franco), 1936–1937; formerly military adviser to Argentine and Peruvian Governments; retired Lieutenant General; head of Iberoé-American Institute. p. 1635.

FEGELEIN, Hermann—SS Gruppenfuehrer and Commander of SS Cavalry Division operating on Russian front until later 1943; succeeded Wolff as Personal Representative of the Reichsfuehrer SS (Himmler) at Hitler's Headquarters, 1944; married in 1944 to Gretl Braun, sister of Eva Braun; executed on Hitler's orders in garden of Reich Chancellery, late April 1945. pp. 1125, 1314, 1631.

FILOFF, Bogdan—Bulgarian Professor of Archaeology who became Prime Minister of Bulgaria and signed Tripartite (Axis) Pact on 1 March 1941. p. 1640.

FISCHBOECK, Hans—First Nazi Minister of Commerce and Transport, 1938; Commissioner General for Finance and Economics in occupied Holland, 1940; Reich Price Commissioner, 1942; SS Oberfuehrer; member of the Reichstag. p. 1443.

FISCHER—Governor of Warsaw in General Government of Poland under Hans Frank. pp. 1373, 1375, 1376.

FLICK, Friedrich—Proprietor and head of large group of German industrial enterprises (coal and iron mines, steel producing and fabricating plants), including Friedrich Flick, K. G.; one of leading financiers and industrialists who from 1932 contributed large sums to the Nazi Party; "Wehrwirtschaftsfuehrer," 1938 (title awarded to prominent industrialists for merit in armaments drive—"Military Economy Leader"); member of "Circle of Friends" of Himmler who contributed large sums to the SS; member of the Nazi Party. p. 1597.

FORD, Henry—Pioneer American industrialist who developed system of mass production; founder of the Ford Motor Co., 1903, and president of same, 1903–1919 and 1943–1945; died in 1945. p. 1423.

FRANCO, BRAHAMONDE, Generalissimo Francisco ("El Caudillo")—Chief of the General Staff of the Spanish Army, 1935; Commander of the Nationist (rebel) forces which deposed the Republican Government of Spain and seized power, 1936; Chief of the Spanish State and Generalissimo, 1936; President of Spain, 1939; in 1942 took title, "President of the Political Junta of the Falange." pp. 1098, 1099, 1107, 1183, 1214, 1506, 1634.

FRANCOIS–PONCET, André—French Under Secretary of State for Foreign Affairs in Tardieu cabinet, 1930; Under Secretary of State to the Premier's office in the Laval cabinet, 1931; Ambassador to Germany, 1931–1938; to Italy, 1938–1940; Member of the National Council, 1941; Controller General of the Press, 1942; arrested by the Gestapo, 1943; liberated by Allied armies, May 1945. p. 1494.

FRANK, August—SS Gruppenfuehrer and Lt. Gen. of Waffen SS; senior official and direct subordinate of Pohl in SS Economic and Administration Office (WVHA) until November 1944, when he was appointed head of the Army Administration

Division after purge following the 20 July 1944 attempt. pp. 1585, 1591, 1602, 1603.

FRANK, Hans—Leading Nazi Party lawyer who became Bavarian Minister of Justice, 1932; Leader of Nazi Lawyers' Bund, 1933–1942; Governor General of Poland, 1939–1945; Reichsleiter until 1942; Reich Minister without Portfolio; SS Obergruppenfuehrer; member of the Reichstag; President of the International Chamber of Law, 1941–1942; President of the Academy of German Law; (not to be confused with Karl Hermann Frank, agitator in the Sudeten German Nazi Party and Nazi member of the Czech Parliament before 1938 who became Higher SS and Police Fuehrer for the Sudetenland and the Protectorat of Bohemia and Moravia after German invasion; German Minister of State in the Protectorate; SS Obergruppenfuehrer; Member of the People's Court; member of the Reichstag). pp. 1126, 1127, 1348, 1349, 1356–1400, 1564, 1573, 1574.

FRICK, Wilhelm—Early Nazi agitator who participated in 1923 Munich putsch but escaped imprisonment; Reich Minister of the Interior, 1933–1943 (succeeded by Himmler); Reich Protector of Bohemia and Noravia (succeeding Heydrich), 1943–1945; SS Obergruppenfuehrer; Reichsleiter; Member of the Reichstag and head of Nazi Parliamentary Group in Reichstag; Member of Ministerial Court for Defense of the Reich. pp. 1400–1420, 1427, 1590.

FRIEDEBURG, Admiral Hans Georg von—Commander-in-Chief of German U-Boats, 1943–1945; succeeded Doenitz as operating Commander of the German Navy when Doenitz became Head of the German State on Hitler's death, May 1945; sent by Doenitz as emissary to Montgomery on 3 May 1945 with first offer of German surrender; signed instrument of surrender with Jodl at Rheims on 7 May 1945. p. 1282.

FRIEDRICHS, Helmut—Deputy Head of Nazi Party Chancery and Head of Section for Internal Party Affairs therein (subordinate of Bormann); SS Gruppenfuehrer; member of the Reichstag. p. 1645.

FRITSCH, Col. Gen. Werner, Baron, von—Commander-in-Chief of the German Army from 1935 who was dismissed from his command on a fabricated charge in February 1938 (succeeded by Brauchitsch); sought and found death in battle before Warsaw, September 1939. pp. 1088–1090, 1100–1102, 1548.

FRITZSCHE, Hans—Chief Editor of DNB (German News Agency), 1933; Head of Home Press Division in Propaganda Ministry, 1940; Plenipotentiary for Political Supervision of Broadcasting in Greater Germany and Head of Broadcasting Division in Propaganda Ministry, under Goebbels, 1943; official radio commentator on program, "Hans Fritzsche Speaks." pp. 1509–1513.

FROMM, Col. Gen. Fritz—Chief of Army Equipment and Commander of the Replacement Training ("Home") Army from 1939 until 20 July 1944, when he was replaced by Himmler; although his last-moment refusal to order out his troops helped foil the July plot, of which he was informed but in which he did not participate actively, he was arrested by the Gestapo, tortured, and executed. pp. 1270, 1570, 1572.

FUNK, Walter—Reich Press Chief and Under Secretary in the Ministry of Propaganda, 1933–1937; member of the Reichstag, 1932–1933; Minister of Economics (succeeding Schacht), 1937; President of the Reichsbank (succeeding Schacht), 1939; Member of the Ministerial Council for the Defense of the Reich, as Plenipotentiary for Economics; Vice President of the Reich Chamber of Culture. pp. 1087, 1387, 1582, 1584–1590.

GAUS, Friedrich Wilhelm—German Ambassador at special disposal of the Foreign Office from 1943; previously head of Legal Division of Foreign Office. p. 1226.

GESSLER, Otto Karl—Minister of War during Weimar Republic, 1920–1928; interned in Dachau Concentration Camp, 1944. p. 1553.

GISEVIUS, Hans Bernd—Former official of Ministry of Interior, member of Gostapo, and Abwehr official who became one of leaders in German resistance movement; one of few survivors of 20 July 1944 attempt, after which he escaped to Switzerland. pp. 1554–1556, 1561.

GLAISE-HORSTENAU, Lt. Gen. Edmund von—Member of Austrian Council of State, 1934; Austrian Minister without Portfolio, 1936; was Nazi sympathizer who helped bring about Anschluss and became Austrian Vice-Chancellor under Seyss-Inquart, 1938; General in charge of Prisoners of War in German High Command; German General Plenipotentiary in Croatia, 1943; member of the Reichstag; SA Gruppenfuehrer. pp. 1131, 1132.

GLOBOCNIK, Odilo—Leading Nazi agitator in Austria who became Gauleiter of Carinthia and member of SS, 1933; Chief of Staff of Nazi Party Directorate in Austria and Gauleiter of Vienna, 1938; Commander of SS and Police in Lublin District of General Government of Poland, 1939; transferred to North Yugoslavia, 1942; SS Gruppenfuehrer and Lt. Gen. of Police; member of the Reichstag. p. 1396.

GLUECKS, Richard—SS Gruppenfuehrer and Lt. Gen. of Waffen SS who succeeded Eiche as commander of concentration camps, 1940–1941; Chief of Amtsgruppe D of WVHA (SS Economic and Administration Head Office); Inspector General of SS "Death's Head Formations" (concentration camp guards). pp. 1300, 1304, 1315, 1581, 1582, 1590, 1591, 1593, 1595, 1596, 1604.

GOEBBELS, Paul Josef—Reich Minister of Propaganda; member of Secret Cabinet Council; Nazi Party Propaganda Leader; President of Reich Chamber of Culture; Gauleiter of Berlin; member of the Reichstag; Chairman of Inter-Ministerial Committee on Air Raid Damage Relief; took initiative in suppressing 20 July 1944 putsch in Berlin and became Plenipotentiary for Total War Effort, 25 July 1944; founder and editor of Nazi paper in Berlin, "Der Angriff"; appointed Reich Chancellor in Hitler's political testament, 29 April 1945; committed suicide in Hitler's air-raid bunker, May 1945. pp. 1275, 1282, 1297–1299, 1302, 1460, 1512, 1513, 1655.

GOERDELER, Carl Friedrich—Reich Price Control Commissioner, 1931–1936; resigned as Mayor of Leipzig in protest against Nazi anti-Semitic measures, 1936; principal civilian leader of German resistance movement; arrested after failure of 20 July 1944 attempt; tortured and executed at Ploetzensee on 2 February 1945; was to have been Chancellor of new government if 20 July 1944 plot had succeeded. pp. 1554, 1568, 1571.

GOERING, Reichsmarshall Hermann Wilhelm—German flying ace in World War I who became early follower of Hitler and took part in the 1923 Munich putsch; SA Obergruppenfuehrer and first leader of the SA; President of the Reichstag, 1932–1945; Prime Minister of Prussia and President of Prussian State Council, 1933; Commander-in-Chief of the Luftwaffe, 1935–1945; Reich Minister for Air; Trustee for the Four Year Plan, 1936; designated successor to Hitler and No. 2 official in Nazi regime, 1 September 1939; Chairman of Ministerial Council for Defense of the Reich; member of Secret Cabinet Council; as holder of special title of Richsmarshall, 1940, highest ranking officer in German Armed Forces; head of the Hermann Goering Works; SS Obergruppenfuehrer; founder of the Gestapo and concentration camp system as Prussian Minister of the Interior, 1933; dismissed from all his offices and right of succession and arrested on Hitler's order for attempting to take power in late April, 1945; denounced for treason and expelled from Nazi Party in Hitler's political testament, 29 April 1945; committed suicide after being condemned to death at Nurnberg, October 1946. pp. 1087–1154, 1161–1166, 1169, 1172, 1203, 1239, 1266, 1272, 1274, 275, 1277, 1281, 1289, 1298, 1312, 1328, 1329, 1338, 1339, 1363, 1367, 1381, 1382, 1387–1389, 1393, 1394–1398, 1399, 1413, 1442, 1453, 1458, 1477, 1484, 1543, 1641, 1642, 1664.

GOLTZ, Maj. Gen. Ruediger, Count von der—German General Staff officer in World War I. p. 1289.

GRAEVENITZ, Maj. Gen. Hans von—Assistant to Reinecke in OKW General Office; head of Division of Welfare and Pensions in OKW General Office. pp. 1606, 1612, 1619, 1620, 1641, 1642, 1646, 1647.

GRANT, Madison—American lawyer and writer; Vice President of Immigration Restriction League; Trustee of Eugenics Research Association, author of "The Passing of the Great Race," 1916, and various works on zoological subjects. p. 1423.

GREIM, Field Marshal Robert, Ritter (Knight), von—Chief of Air Force Personnel, 1937; directed air attacks against Great Britain, 1940; directed air operations on Eastern Front, 1941–1944; Commander of 6th Air Fleet with headquarters at Munich, 1945; promoted by Hitler to Field Marshal and successor to Goering as Commander-in-Chief of the Luftwaffe, April 1945; committed suicide after capture in June 1945. pp. 1280, 1281.

GROENER, Gen. Wilhelm—Chief of Staff to Hindenburg in World War I, 1918–1919; with Hindenburg deposed the Kaiser and approved acceptance by Germany of the Versailles Treaty; Minister of War and of Interior under Weimar Republic, 1928–1932, and in this capacity prohibited the SA. p. 1438.

GROSSKURTH, Lt. Col. Hans August—Chief of Section 2 of Abwehr in charge of commando activity, 1939–1940 (succeeded by Lahousen); Deputy Corps Commander in Crimea, 1942; Chief of Staff of 9th Army Corps in Russia; captured at Stalingrad and died in captivity, March 1943; was one of a group of officers involved in early plotting to overthrow Hitler (1939). p. 1568.

GUDERIAN, Col. Gen. Heinz—As Commander-in-Chief of all Panzer Troops, played leading part in Polish campaign, 1939; Inspector General of Panzer Troops, 1943, in charge of tank and motorized armor units of German Army; appointed Chief of Staff of Army (OKH) (succeeding Col. Gen. Kurt Zeitzler) in July 1944 after putsch of which he had been informed in advance, which he originally tacitly approved, but which he helped defeat at a critical stage; member of Tribunal which tried participants in 20 July 1944 putsch; succeeded as Chief of the General Staff by Krebs, February 1945. p. 1280.

GUERTNER, Franz—Reich Minister of Justice in Papen cabinet of 1932 and Schleicher cabinet of 1932–1933; although not a Nazi, was appointed Minister of Justice by Hitler on Hindenburg's insistence, and served from 1933 until 1941; died in 1941; succeeded by Otto Georg Thierack, 1942. pp. 1358, 1362, 1450, 1451, 1455.

HABICHT, Theodor—German who led Nazi agitation and uprisings in Austria as Provincial Inspector of Nazi Party for Austria, appointed by Hitler in 1931; a leader of the "Austrian Legion" formed in Germany, 1933; involved in murder of Dollfuss, July 1934, and dismissed from his post for indiscretions connected therewith. pp. 1145, 1146, 1149, 1326, 1505.

HAEFTEN, Lt. Werner von—Adjutant to Stauffenberg; went with Stauffenberg to Hitler's Headquarters at "Wolfschanze" in Rastenburg, East Prussia, on 20 July 1944 and arranged getaway while Stauffenberg placed bomb next to Hitler; executed summarily on order of Fromm after plot failed that evening; brother, Hans Bernd von Haeften, a Legation Councillor in the Foreign Office and also a member of the resistance movement, was arrested by the Gestapo shortly afterwards and executed in August 1944. p. 1270.

HAGELIN—Quisling's deputy in Germany, 1939–140, for purpose of collaborating with Germans on forthcoming invasion of Norway; subsequently assistant to Quisling during occupation. p. 1328.

HALDER, Col. Gen. Franz—Quartermaster General of Army General Staff, 1937; Chief of General Staff of the Army, 1938–1942 (succeeding Back); retired in 1942 (succeeded by Col. Gen. Kurt Zeitzler); as Bavarian monarchist, was opposed to Hitler's policies and made cautious and indecisive plans with the underground to depose Hitler in 1938–1939 but was unwilling to take initiative; his constant procrastination was largely responsible for failure to execute these early plots. pp. 1547–1575.

HALIFAX, Earl of (Edward Frederick Lindley Wood)—British Secretary of State for Foreign Affairs, 1938–1940; British Ambassador in Washington, 1941–1946. pp. 1105, 1151.

HAMILTON, Duke of (Marquess of Clydesdale) (Douglas-Douglas Hamilton)—Premier Peer of Scotland; Chief Pilot of Mount Everest Flight Expedition, 1933; when Hess parachuted from a plane over the Scottish moors near Dungavel on 10 May 1941 he hoped to see Hamilton and through him make peace with King George VI; Hess and Hamilton knew nothing of each other except for a brief meeting at dinner in Berlin during the 1936 Olympic Games. pp. 1168, 1169, 1250.

HAMMERSTEIN-EQUORD, Gen. Kurt, Baron von—Anti-Nazi supporter of Weimar Republic who was Commander-in-Chief of the German Army from 1930 until 1934, when he was forced to resign by Blomberg and retired from the Army; one of military leaders in underground movement; died natural death, 1943. pp. 1460, 1547.

HASE, Lt. Gen. Paul von—Commandant of 3d Military District (Berlin); supporter of 20 July 1944 conspiracy; arrested by Gestapo afterwards. p. 1561.

HASSELL, Ulrich von—German Ambassador to Italy, 1932–1937; replaced as ambassador of Axis and Hitler's aggressive policies; thereafter became diplomatic adviser to and one of leaders of anti-Nazi underground; took part in 20 July 1944 plot, and if plot had succeeded and surrender negotiations were undertaken first with Western Allies, was to have been Foreign Minister of new German government; after failure of 20 July attempt was arrested by the Gestapo, tried and condemned by the People's Court, and executed in September 1944. pp. 1568, 1572.

HAUSHOFER, Albrecht—Son of Karl Haushofer; Professor of Geopolitics at University of Berlin; at one time was a Nazi on Ribbentrop's and later on Papen's staffs; later joined underground and was implicated in 20 July 1944 attempt; caught while trying to escape to Switzerland, imprisoned, and executed without trial by the SS in April 1945. p. 1167.

HAUSHOFER, Prof. Karl—Retired general; President of Society for Geopolitics; Publisher of periodical, "Die Geopolitik"; lecturer at Munich University, where Hess was his favorite disciple; through Hess his doctrines of German expansionism were communicated to Hitler and became part of Nazi program; although his wife was partly Jewish, Hess shielded them from Party action until his flight to England; thereafter both Haushofer and his wife were sent to a concentration camp; both committed suicide in 1946. pp. 1160, 1163–1167, 1169, 1170.

HEINRICI, Col. Gen. Gotthard—Commander of German 4th Army, 1942, and participated in Russian campaign; succeeded Himmler as Commander of the Army Group Vistula, which was fighting west of Berlin in late April 1945; was ordered by

Hitler to come to relief of besieged Berlin on 28 April but was unable to do so. pp. 1279, 1281, 1282.

HELLDORF, Wolf Heinrich, Count von—Berlin Chief of Police (Order Police); an early supporter of Hitler and SA leader who staged anti-Jewish demonstrations in Berlin; later became opposed to Nazi regime and joined resistance movement; after failure of 20 July 1944 plot was arrested and executed in August 1944. pp. 1177, 1453, 1553, 1561.

HEMMEN, Hans Richard—German Foreign Office official with rank of Minister who specialized in economic affairs and negotiation of trade agreements; was attached to German occupation headquarters in France. pp. 1575–1580.

HENDERSON, Sir Neville—British Minister to Yugoslavia, 1929–1935; Ambassador to Germany, 1937–1939; died in 1942. pp. 1216, 1224, 1471, 1486.

HENKE (HENCKE), Andor—Professional diplomat who was head of Political Division of German Foreign Office; Head of German delegation to German-Soviet Central Committee for Frontier Problems, 1939; attached to German embassy in Madrid as Minister, 1943. p. 1296.

HERZL, Theodor—Hungarian-Jewish author who in 1896 published his famous pamphlet, "Der Judenstaat"; founder Zionist or Jewish Nationalist movement in Basle, 1897, with goal of a Jewish homeland in Palestine; died in 1904. pp. 1425, 1427, 1435.

HESS, Rudolf—Joined Nazi Party in 1920 and became Hitler's private secretary; after 1923 Munich putsch was sentenced to imprisonment with Hitler in Landsberg fortress, where Hitler wrote "Mein Kampf," dictating most of it to Hess; designated second in line of succession to Hitler (after Goering), 1 September 1939; author of slogan, "Guns instead of Butter"; Deputy of the Fuehrer for all Party Affairs; Reich Minister without Portfolio; Had of the Party Chancery; Member of the Secret Cabinet Council; Member of the Reichstag; flew to England, 10 May 1941, and was interned during remainder of war (succeeded by Bormann). pp. 1090, 1145, 1148, 1154–1174, 1198, 1250, 1271-1273, 1297, 1484, 1515.

HEYDRICH, Reinhard—As Chief of the Security Police and SD and head of RSHA was Himmler's chief assistant until 1942 (succeeded by Kalterbrunner); Reich Protector for Bohemia and Moravia, 1941 (succeeding Neurath), where he earned title of "The Hangman"; in revenge for his assassination in Prague in May 1942 the Czech village of Lidice was obliterated, its men murdered, its women sent to concentration camps, and its children scattered throughout the continent. pp. 1300, 1324, 1363, 1582, 1583, 1602, 1603.

HIEMER, Ernst—Chief Editor of Streicher's periodical, "Der Stuermer". pp. 1426, 1428, 1431, 1433, 1436.

HIMMLER, Heinrich—Formerly an agriculturalist; was an early Nazi follower and took part in the 1923 Munich putsch under Roehm; as Reichsfuehrer SS took leading part in liquidation of Roehm, Gregor Strasser, Schleicher and others on 30 June

1934; Chief of the German Police; Reichminister of the Interior, 1943 (succeeding Frick); Member of Ministerial Council for Defense of the Reich; Reich Commissar for the Strengthening of German Folkdom; Military Chief of the Volkssturm; Reichsleiter; Chief of Army Equipment and Commander of the Replacement Training Army (succeeding Fromm) after 20 July 1944; Chief of the Waffen SS; Commanding General of Army Group Vistula on Eastern Front, February 1945 (succeeded by Heinrici, April 1945); toyed with plans to succeed Hitler after military putsch, 1943–1944, but finally rejected them and helped suppress 20 July 1944 plot; in spring of 1945, assisted by Schellenberg, made unsuccessful peace overtures to Western Allies through Bernadotte; expelled from Party and dismissed from all his offices by Hitler in his political testament of 29 April 1945, and ordered arrested for treason; committed suicide after capture by British troops, May 1945. pp. 1120–1126, 1128, 1203, 1205, 1206, 1287, 1289, 1290, 1298–1306, 1308, 1310–1317, 1320–1322, 1324, 1351–1353, 1358, 1363, 1365–1367, 1369–1371, 1376–1378, 1380, 1384, 1396, 1424, 1482, 1533, 1534, 1564, 1574, 1575, 1580, 1581, 1583, 1584, 1587–1592, 1595–1601, 1604, 1610, 1622, 1629–1634, 1641, 1642, 1644, 1662, 1670.

HINDENBURG (von BENECKENDORFF und von HINDENBURG), Lt. Gen. Oskar—Son and aide of the Field Marshal; suspected of intriguing with Nazis and influencing his father to accept Hitler as Chancellor, 1933; Commander of Prisoner of War Camps in 1st Military District during World War II. pp. 1456, 1465, 1477, 1481, 1482.

HINDENBURG (von BENECKENDORFF und von HINDENBURG), Field Marshal Paul—World War I German military leader who dethroned the Kaiser; President of Germany, 1925–1934; died on 2 August 1934 leaving a political testament indicating, in passages suppressed by the Nazis when the document was pubished, a wish not to have Hitler succeed him as President. pp. 1177, 1360, 1363–1365, 1410, 1411, 1449–1452, 1454–1467, 1476–1483, 1517.

HITLER, Adolf—German Fuehrer and Reich Chancellor; Commander-in-Chief of the German Armed Forces; Commander-in-Chief of the Army; Fuehrer of the National Socialist German Workers' (Nazi) Party; born in Braunau, Austria, in 1889; in November 1923 staged unsuccessful attempt at coup d'etat in Munich beerhall and was senetnced to 5 years imprisonment in Landsberg fortress, where with Hess he wrote "Mein Kampf" (published in 1925); released from prison in December 1924 and recommenced political agitation; in 1930 obtained German citizenship; in 1932 candidate for President against Hindenburg and was defeated; during new elections in July 1932 carried on energetic campaign resulting in offer of post of Vice Chancellor which he refused; on 30 January 1933 was appointed Chancellor on resignation of Schleicher; in June 1934 liquidated "unreliable" elements of Party ("Roehm Purge"); in August 1934, on death of Hindenburg, became head of state; in February 1938 dismissed Blomberg and Fritsch and assumed command of Wehrmacht; in September 1939 first unsuccessful attempt on his life was made in Munich; in December 1941 dismissed Brauchitsch and took over personal command of Army operations; on 20 July 1944 second unsuccessful attempt on his life occurred at his military headquarters in Rastenburg, East Prussia; on 29 April 1945 married Eva Braun in air-raid bunker in Berlin; on following day committed suicide in bunker. pp. 1088–1105, 1107–1122, 1127, 1128, 1131–1136, 1138, 1140–1154, 1157–1163, 1167, 1168, 1174–1220, 1222–1229, 1231–1233, 1235–1244, 1247–1257, 1259–1264, 1267, 1270–1299, 1302, 1305–1307, 1310, 1311, 1314, 1316–1319, 1321–1323, 1326–1334, 1336–1344, 1346, 1348, 1351, 1355–1360, 1363–1369, 1371, 1373, 1374, 1376–1378, 1380–1382, 1393, 1394, 1396, 1398, 1399, 1401–1403, 1407–1418, 1421–1425, 1427–1429, 1431, 1432, 1438–1443, 1445, 1446, 1449, 1452–1455, 1457–1461, 1463, 1464, 1466–1473, 1475–1492, 1494–1498, 1500–1506, 1508–1511, 1514, 1515, 1517, 1519, 1521, 1526–1528, 1533–1544, 1547–1574, 1576, 1578, 1599, 1609, 1610, 1621, 1622, 1629–1633, 1635–1642, 1644, 1648, 1650, 1651, 1655, 1665, 1670, 1672, 1675, 1676.

HOEPNER (HOEPPNER), Col. Gen. Erich—Tank warfare expert who commanded first German armored corps and served in Polish, French, and Russian campaigns; courtmartialed in July 1942 for advocating retreat during Russian campaign against Hitler's orders, and was dismissed from service; an active member of resistance movement and after 20 July 1944 was arrested, tried and condemned by the People's Court, and tortured and executed in August, 1945. p. 1270.

HOESS, Rudolf Franz Ferdinand—Commandant of Auschwitz Concentration Camp, 1940–1943, during which period 3,000,000 persons were exterminated there; previous experience at Dachau and Sachsenhausen concentration camps; member of SS, Waffen SS, and Deathshead Formations; Chief of Amt I in Amt Group D of WVHA (SS Economic and Administration Head Office), 1943–1945. pp. 1581–1583, 1590–1592, 1601.

HOFACKER, Lt. Col. Caesar von—Staff officer under Kluge as Commander-in-Chief in the West; member of resistance movement who acted as liaison between Beck-Goerdeler group of conspirators in Berlin and Stuelpnagel-Kluge group in Paris, in preparation for 20 July 1944 attempt. pp. 1268–1270.

HORTHY de NAGYBANYA, Admiral Nicholas Vitéz—Captain in Austro-Hungarian Navy in World War I; Rear Admiral in Command of Fleet, 1918; War Minister in Hungarian Szeged Government, 1919, and suppressor of Communist Revolution of Bela Kuhn; later Commander-in-Chief of Hungarian National Army; Regent of Hungary, 1920–1944; arrested by order of Hitler and taken to Germany as prisoner after Nazi-supported Ferenc Szalasi seized power in October 1944. pp. 1208–1211, 1292.

HOSSBACH, Lt. Gen. Friedrich—As Colonel was adjutant to Hitler, 1937; Commanding Officer of 82nd Infantry Regiment, 1938; took part in French campaign, 1940; Commander of 31st Infantry Division, 1942; Commander of 46th Panzer Corps in Balkan and Russian campaigns, 1943–1944. pp. 1088, 1089.

HUGENBERG, Alfred—Leading German publisher and chairman of German Nationalist (conservative) Party whom Hitler took into his cabinet as Minister of Economics and Food Supply in January 1933; controlled the conservative Scherl Publishing House and was principal shareholder of the motion picture concern, UFA; forced to resign in June 1933, when Nationalist Party was dissolved. p. 1523.

HUNTZIGER, Gen. Charles—As Head of French Commission, signed armistice with Germany at Compiegne, 22 June 1940, and with Italy two days later; Minister of Defense and Commander-in-Chief of French Army (succeeding Gen. Maxime Weygandt) in Petain's Vichy Government; died in airplane accident in 1941. pp. 1576–1578.

INNITZER, Theodor, Cardinal—Roman Catholic Archbishop of the Church Province of Vienna and Bishop of the Diocese of Vienna; incurred Nazi wrath for support of the Dollfuss and Schusschnigg governments; after German occupation of Austria issued proclamation with other Austrian bishops endorsing National Socialism and urging approval of Anschluss in Nazi plebiscite; reprimanded by Pope Pius XI and obliged to make partial retraction, suppressed by Nazi censors. pp. 1150, 1469.

JESCHONNECK, Col. Gen. Hans—Chief of Staff of the Luftwaffe, February 1939–November 1943 (preceded by Gen. Stumpff, succeeded by Gen. Korten). p. 1108.

JODL, Col. Gen. Alfred—As Chief of the Armed Forces Operations Staff of the OKW, was Hitler's chief adviser on military strategy and planning, August 1939–May 1945; signed instrument of surrender on behalf of Germany at Rheims, 7 May 1945. pp. 1108, 1109, 1111–1113, 1266, 1274, 1276–1279, 1281–1283, 1287, 1293, 1535, 1537–1539, 1560, 1561, 1635–1637.

KALTENBRUNNER, Ernst—Austrian Nazi who was commander of SS in Austria, 1933–1934; was imprisoned for part in putsch in which Dollfuss was murdered, 1934; SS and Police Leader for Ostmark and Chief of Security in Seyss-Inquart Government, 1938; Chief of the Security Police and SD, and head of the RSHA, January 1943–May 1945 (succeeding Heydrich); member of the Reichstag; SS Obergruppenfuehrer. pp. 1295–1325, 1599–1603, 1621, 1622, 1625, 1631, 1633.

KAMMLER, Ing—Chief of Works and Buildings Section of WVHA (SS Economic and Administration Head Office); SS Gruppenfuehrer and Lt. Gen. of Police; thought to have had charge of production of V2 rockets. p. 1593.

KATZMANN, Friedrich—Before 1939 in administration of concentration camps; SS and Police Leader for District of Radom (Poland), 1940; SS and Police Leader for District of Galicia (Poland), 1941; Higher SS and Police Leader of 20th Military District, 1943–1945; SS Gruppenfuehrer and Lt. Gen. of Police; Member of the People's Tribunal. p. 1600.

KEITEL, Field Marshal Wilhelm—Chief of the High Command of the Armed Forces (OKW) and deputy to the Supreme Commander of the Armed Forces (Hitler), February 1938–May 1945; conducted French armistice negotiations at Compiegne and signed for Germany, June 1940; member of Cabinet with rank of Reich minister; member of Secret Cabinet Council; member of Ministerial Council for Defense of the Reich; signed instrument of surrender on behalf of Germany at Berlin, 10 May 1945. pp. 1109, 1111–1113, 1256–1294, 1316, 1321, 1378, 1476, 1533, 1535–1540, 1542, 1544, 1546, 1560, 1561, 1575–1577, 1606, 1607, 1610, 1614, 1615, 1617, 1619, 1636, 1641–1644, 1646–1650, 1665, 1672.

KEPPLER, Wilhelm—German industrialist who became official in Ministry of Economics and economic adviser to Hitler, 1933; sent by Hitler as German representative to World Economics Conference in London, 1933; Under Secretary for Special Duties in Foreign Office; dispatched to Vienna on 11 March 1938 to put pressure on Schusschnigg to agree to Anschluss; Senior official in Four Year Plan, in charge of raw and "ersatz" materials; chairman of numerous Reich-controlled industrial firms; member of the Reichstag; SS Obergruppenfuehrer; head of the "Circle of Friends" of Himmler. pp 1133–1135, 1467.

KERSTEN, Felix—Swedish physiotherapist who, as Himmler's masseur, became influential confidant of the Reichsfuehrer SS. pp. 1629, 1630.

KESSELRING, Field Marshal Albert—Chief of Staff of the Luftwaffe, 1936; Commander of an Air Fleet in Polish campaign, 1939; Commander of Air Fleet II in Dutch campaign and against Britain, 1940; Military Commander in the Mediterranean Area, 1941; Commander-in-Chief of German Forces in Italy and Military Commander of Italy, 1943–1945 (succeeded by Vietinghoff); Commander-in-Chief West, March 1945 (succeeding Rundstedt); tried by British Military Commission for war crimes, including 1944 massacre of hostages at Ardeatine Caves in Rome; was convicted and condemned to death, but sentence was commuted to life imprisonment, July 1947. pp. 1647, 1650, 1653–1657, 1659, 1661–1665, 1667, 1669–1674.

KLUGE, Field Marshal Guenther von—Commander of 4th Army in Poland, 1939; Commander of Army Group Center (succeeding Field Marshal Fedor von Bock), formed for attack on Russia, June 1941; Commander-in-Chief on Western Front, July 1944 (succeeding Rundstedt) until August 1944, when Rundstedt resumed command; a vacillating member of the resistance movement, he refused to carry out his assignment to seize control of the German administration in Paris, on learning that Hitler had survived the bomb explosion on 20 July 1944; was thereafter dismissed of command in West; when his attempt to surrender to Gen. Patton proved unsuccessful, committed suicide in August 1944 to escape arrest by Gestapo. p. 1262.

KOERNER, Paul—Personal Secretary to Goering in Prussian Ministry of Interior, 1933; State Secretary to Plenipotentiary for Four Year Plan (Goering); Prussian State Councillor; member of the Reichstag; SS Obergruppenfuehrer; Chairman of the Board of Directors of the Hermann Goering Works. p. 1329.

KOPKOW—SS Hauptsturmfuehrer (captain); head of section A2 of Amt IV of RSHA section of Gestapo in charge of defense against sabotage, combatting of sabotage, political falsification). p. 1308.

KOPPE, Wilhelm—Higher SS and Police Fuehrer and State Secretary for Security in General Government of Poland from November 1943, succeeding Krueger; SS Obergruppenfuehrer and General of Police; member of the Reichstag. pp. 1380, 1384.

KRANEFUSS—SS Brigadefuehrer; assistant to Himmler who specialized in economic spoliation of occupied territories and building up financial reserves of SS. pp. 1598, 1599.

KRANKE, Admiral—Participated in planning of "Weseruebung", the plan for invasion of Norway. pp. 1539, 1541.

KREBS, Col. Gen. Hans—Took part in Western campaign, 1940, and invasion of Russia on central sector in June 1941; Chief of Staff of German 9th Army under Model, 1942-1943; Chief of Staff of the Army (OKH), February–May 1945 (succeeding Guderian) and was with Hitler in the air-raid bunker during siege of Berlin; attempted to negotiate armistice with Field Marshal Zhukov of Red Army after Hitler's death but was unwilling to accept Russian terms, 1 May 1945; was witness to Hitler's political testament, 29 April 1945. pp. 1280, 1290, 1291.

KRETSCHMANN, Ernst—General Labor Fuehrer; Representative of Plenipotentiary for Manpower (Sauckel); President of the Labor Service Office for Hessen–Nassau; Reich Trustee for Labor in Rhein Main. p. 1662.

KRUEGER, Walter—SS Gruppenfuehrer; Higher SS and Police Fuehrer and State Secretary for Security in General Government of Poland until November 1943 (succeeded by Koppe); thereafter Commander of SS Panzer-Grenadier Division, "Das Reich" on Russian Front; killed by Polish patriots. pp. 1376, 1380.

KRUPP von BOHLEN und HALBACH, Gustav—After marrying Bertha Krupp, Krupp family heiress, in 1905, took Krupp name and became head of Krupp industrial enterprises; Chairman of Board of Friedrich Krupp, A.G., (munitions works); secrectly manufactured armaments in violation of Versailles Treaty during 1920's; one of leading German industrialists whose financial aid helped bring Hitler to power; Chairman of Reich Association of German Industry, 1933; Leader of War Production, 1937, and thereafter made large contributions to Nazi Party and organizations; awarded Party's Golden Badge of Honor for services to the Reich, 1940; by special decree of Hitler in 1943 Krupp Works were transformed into private family concern controlled in perpetuity by a single member of the family, in recognition of services to Reich; in 1943 control of Krupp Works passed to Krupp's son, Alfred, formerly President, and a member of the Nazi Party. p. 1594.

LACKNER, Lt. Gen. Walter—Commanding General of 10th

Flight Division of the Luftwaffe; participated in invasion of Norway, 1940. p. 1543.

LAHOUSEN, Maj. Gen. Erwin—Chief of Section II of Abwehr in charge of commando activity under Canaris (succeeding Grosskurth), 1940–1943; as an opponent of Hitler, joined Canaris and other Abwehr officers (Col. Georg Hansen, Col. Pieckenbrock, Oster) in sabotaging Hitler's orders for the conduct of warfare contrary to the laws of war. p. 1607, 1611–1618.

LAMMERS, Hans Heinrich—Reich Minister and Head of the Reich Chancery, and as such, chief administrative and legal adviser to Hitler; member and secretary of Secret Cabinet Council and Ministerial Council for Defense of Reich; SS Obergruppenfuehrer; Prussian State Councillor; Member of Academy of German Law; with Bormann constituted a kind of palace guard around Hitler, gradually obtaining more power, and hence in conflict with Goering, Goebbels, and other ministers; gradually elbowed out by Bormann; arrested with Goering on Hitler's order, April 1945. pp. 1330, 1375, 1381, 1396, 1456.

LAVAL, Pierre—French Foreign Minister 1934–1936; with Sir Samuel Hoare, British Foreign Secretary, concluded the Hoare-Laval Accord recognizing Italian conquest of Ethiopia and recommending cession of certain Ethiopian provinces to Italy, 1935; Foreign Minister in Petain's Vichy Government, 1940; Premier, 1942; most notorious of French collaborators with Germans; convicted of treason and after attempt to commit suicide was executed by firing squad in Fresnes Prison, October 1945. pp. 1219, 1244, 1445.

LEOPOLD, Capt. Josef—Leading Nazi agitator in Austria working for Anschluss, 1938. p. 1475.

LEY, Robert—Leader of German Labor Front (DAF); Reichsleiter and Chief of Party Organization; Reich Housing Commission; SA Obergruppenfuehrer; Head of Organization of Reich Party Rallies; committed suicide in Nurnberg prison, October 1945. pp. 1332, 1514–1521.

LEYSER, Ernst-Ludwig—Deputy Gauleiter of Westmark (formerly Rheinpfalz) from 1933; SS Brigadefuehrer; member of the Reichstag. p. 1655.

LIEBEL, Willi—Oberbuergermeister of Nurnberg from 1933; head of Central Department in Reich Ministry of Armaments, 1942–January 1945; official of German Red Cross; SA Oberfuehrer; member of the Reichstag; member of the People's Tribunal. p. 1399.

LINDEMANN, Karl—President of Reich Chamber of Commerce; Chairman of Board of Directors of Atlas Works and North German Lloyd Steamship Co.; director of Dresdener Bank, Hamburg-American Line, and other large concerns. p. 1597.

LIST, Field Marshal Siegmund Wilhelm Walter—Commander of German 14th Army during Polish campaign, 1939; Commander of 12th Army during Western campaign, 1940; Commander of Army Group A in the Balkans, 1941–1942; Commander-in-Chief Southwest until summer 1942; retired in 1944. p. 1287.

LLOYD-GEORGE, David (First Earl of Dwyfor)—British Liberal Party leader who was President of the Board of Trade, 1905; Chancellor of the Exchequer, 1908–1915; Minister of Munitions, 1915; Prime Minister and First Lord of the Treasury, 1916–1922 (succeeded by Baldwin); as British representative was, with Wilson, Clemenceau, and Orlando, one of the "Big Four" at Paris Peace Conference, 1919; Leader of the Opposition, 1922; died in March 1945. pp. 1114, 1425.

LOERNER, Georg—Head of Supply Section of WVHA (SS Economic and Administrative Head Office, headed by Pohl;) SS Gruppenfuehrer and Maj. Gen. of Waffen SS. pp. 1585, 1588, 1601, 1604.

MACDONALD, (James) Ramsay—Leader of British Labor Party who was Prime Minister of Great Britain, January–November 1924 and 1929–1935 (succeeding and succeeded by Baldwin both times); author of Geneva Protocol, 1924; Lord President of the Council, 1935–1937; died 9 November 1937. p. 1175.

MAISEL, Maj. Gen. Ernst—Deputy Chief of the Personnel Office of the Army (OKH). pp. 1257–1259, 1263, 1268.

MARTIN, Benno—SS Gruppenfuehrer and Lt. Gen. of Police; Higher SS and Police Fuehrer "Main" (13th Military District), 1942; previously Police President of Nurnberg and head of Gestapo in Nurnberg. p. 1600.

MEISSNER, Otto Lebrecht—Chief of the Presidential Chancery, 1920–1945; Minister of State, 1934; curator of the Political Academy; member of Academy of German Law; was instrumental in persuading Hindenburg to appoint Hitler Reich Chancellor, 1933. pp. 1455, 1465.

MESSERSCHMITT, Wilhelm—Leading figure in German aircraft industry; chairman and director of Messerschmitt, A. G., aircraft works; Vice President of German Academy of Aeronautical Research; awarded title, "Pioneer of Labor", 1940; "Wehrwirtschaftsfuehrer" (title awarded to prominent industrialists for armaments achievements); professor of engineering. pp. 1162, 1163, 1273.

MIKHAILOVIC, Gen. Dragoliub ("Draja")—Leader of the Yugoslav Chetniks, who first resisted Germans in Yugoslavia; Minister of War of Yugoslav Government-in-Exile in London and Commander-in-Chief of Free Yugoslav Army, 1942; tried by People's Court appointed by Tito for treason and collaboration with Germans; condemned and executed, 17 July 1946. pp. 1637–1639.

MILDNER, Rudolf—Colonel of Police; Doctor of Jurisprudence; Chief of Section A5 of Amt IV of RSHA (subdivision of Gestapo); Commander of Security Police in Vienna; formerly Gestapo chief in Chemnitz and Katowice, and Inspector of Security Police and SD in Kassel; Commander of the Security Police and SD in Denmark, 1943. pp. 1300, 1301.

MODEL, Field Marshal Walter—German tank warfare expert who was Chief of Staff of 4th Army Corps during Polish campaign, 1939; Chief of Staff of an army in Western campaign, 1940; Commander of Armored Division in Russia, 1941; Commander of 9th Army in Russia, January 1942–November 1943; Commander of Army Group North on Eastern Front, January 1944–May 1944; May–June 1944 Commander of Army Group North Ukraine; June–September 1944 Commander of Army Group Center of Eastern Front; Commander of Army Group B in the West, September 1944–April 1945 (succeeding Kluge); reported a suicide. p. 1285.

MOLOTOV, Vyacheslav Mikhailovitch (Skryabin)—Soviet People's Commissar for Foreign Affairs since 1939, when he replaced Maxim Litvinov; previously Premier; Vice President of the Council of Ministers of the USSR; member of the Political Bureau of the Central Committee of the All-Union Communist Party. pp. 1109, 1110, 1187, 1189–1192, 1194, 1243, 1510.

MONTGOMERY OF ALAMEIN, Field Marshal Sir Bernard Law (First Viscount of Hindhead, 1946)—Commander of British 3d Division, 1939; 5th Corps, 1940; 12 Corps, 1941; Southeast Army, 1942; Commander of 8th Army from July 1942 during campaigns in North Africa, Sicily, and Italy; his "Desert Rats" defeated Rommel at El Alamein, November 1942; Commander-in-Chief of British Group of Armies and Allied Armies in Northern France, 1944; Commanded 21st Army Group, 1944–1945; Commander of British Army of the Rhine, 1945–1946; Chief of the Imperial General Staff since 1946. p. 1283.

MORELL, Prof. Dr. Theodor—Hitler's physician and constant companion, 1936–1945; introduced to Hitler by his personal photographer, Heinrich Hoffmann; a quack who made a fortune manufacturing patent nostrums under Nazi patronage; concentrated on treatment by continuous injections of varied drugs and artificial stimulants. p. 1274.

MOSLEY, Sir Oswald Ernald—Formerly a Conservative Member of Parliament for Harrow; Chancellor of the Duchy of Lancaster in the Labor Government, 1929-1939; Leader of the B.F.U. (British Union of Fascists) since 1932; at his secret wedding to Diana Guiness in Munich, December 1937, Hitler was best man; chairman of Mosley Publications, Ltd. p. 1423.

MUELLER, Heinrich—Chief of Amt IV of RSHA (Gestapo) under Heydrich, 1939–1942, under Kaltenbrunner, 1943–1945; SS Gruppenfuehrer and Lt. Gen. of Police; known as one of the most vicious men in SS; secret intriguer against Himmler, his chief. pp. 1300, 1301, 1303, 1304, 1306, 1315, 1317, 1590, 1601, 1602, 1604, 1612–1615, 1622.

MURPHY, Robert Daniel—American diplomat who was counsellor to American Embassy in Paris, 1940; Charge d'Affaires at U. S. mission to Vichy Government, July–August 1940; appointed by Roosevelt to investigate conditions in French North Africa, November 1940; concluded economic accord with Gen. Maxime Weygand, February 1941; effected political preparations for Allied landings in North Africa, November 1942; appointed Roosevelt's Personal Representative, with rank of Minister, to French North Africa, and Chief Civil Affairs Officer on staff of Supreme Commander AFHQ; participated in negotiations for Italian armistice, July–August 1943; U.S.

Political Adviser with rank of Ambassador, AFHQ, October 1943; U. S. Political Adviser for Germany, Supreme Headquarters, AEF, September 1944. p. 1250.

MUSSOLINI, Benito ("Il Duce")—Former Italian editor; as leader of Fascisti (Black Shirts) marched on Rome and seized power in bloodless coup, October 1922; Prime Minister, Chief of Italian Government, and Dictator of Italy, 1922–1943; invaded Ethiopia, 1935; Hitler's partner in Anti-Comintern and Axis Pacts, 1937; First Marshal of Italian Empire, 1938; removed from office and made prisoner by decision of Fascist Grand Council, July 1943; rescued by Skorzeny in October 1943; executed by firing squad of Partisans on 28 April 1945 in village of Dongo on Lake Como. pp. 1097, 1107, 1146, 1147, 1149, 1184, 1191, 1192, 1204, 1314, 1472, 1483, 1492, 1501, 1507, 1653, 1655, 1656, 1675.

MUSY, Alt Bundesrat—Swiss statesman who negotiated with Himmler for large-scale release of Jews in 1944; son of Jean Marie Musy, former President of Swiss National Confederation, 1925, and 1930, who also carried on similar negotiations with Himmler, 1945. p. 1622.

NEUBACHER, Hermann—Engaged in illegal Nazi agitation in Austria and was imprisoned, 1935; on release, employed in Central Office of I. G. Farben, 1936; after Anschluss was first deputy Buergermeister of Vienna, 1938; Special Envoy, with rank of Minister, to Rumania for Economic Questions, 1941; Special Envoy to Greece for Economic Questions, 1941; Nazi Party Political Leader for Vienna, 1941; Special Envoy of Foreign Office in Balkans, 1943. p. 1297.

NEURATH, Constantin H. K., Baron Von—German diplomat who was Ambassador to Denmark, 1919, Italy, 1921–1930, and England, 1930–1932; on 2 June 1932 appointed Minister for Foreign Affairs and continued in office by Hitler; succeeded by Ribbentrop in February 1938 and appointed President of Secret Cabinet Council; first Reich Protector of Bohemia and Moravia, 1939; temporary retirement, 7 September 1941 (succeeded by Heydrich); final retirement, 1944; SS Obergruppenfuehrer; member of the Reichstag; member of Reich Defense Council; Reich Minister without Portfolio. pp. 1089, 1212, 1213, 1368, 1488–1509, 1553.

NIEDERMAYER, Maj. Gen. Prof. Dr. Oskar, Ritter (Knight) von—Commander of 162d German Infantry Division which was engaged in Russian campaign, 1941–1943. pp. 1510, 1511.

NIEMOELLER, Pastor Martin—German U-boat captain in World War I; Evangelical Lutheran clergyman who with others founded the "Confessional Church" as Protestant revivalism of anti-Nazi character; interned in concentration camps at various times, 1937–1945; leader and symbol of Church's resistance to Hitler. p. 1366.

NOSKE, Gustav—Minister of War during Weimar Republic, February 1919–March 1920; head of Province of Hannover from 1933. pp. 1438, 1553.

OHLENDORF, Otto—Manager of Reich Group Trade, 1938–

1943; Chief of Amt III of RSHA (SD Inland—Security Service), part-time, 1939–1945; Chief of Einsatz Group D (unit of Security Police and SD) attached to German 11th Army during invasion of Russia, and responsible for liquidation of 90,000 men, women, and children, 1941–1942; Permanent Deputy to the Under Secretary of Reich Ministry of Economics, 1943–1945; SS Gruppenfuehrer and Lt. Gen. of Police. pp. 1596–1598, 1633.

OLBRICHT, General of Infantry Friedrich—Chief of the General Army Office in OKH; Deputy Commander of the Replacement Training Army (often called Reserve or Home Army) under Fromm; one of military leaders in the resistance movement, which planned that either he or Oster should become Minister of War in new government after Hitler was assassinated and the Nazis deposed; after failure of 20 July 1944 attempt he was executed that night without trial on orders of Fromm. pp. 1270.

ORSENIGO, Monsignor Cesare—Papal Nuncio in Holland, 1922–1925; in Hungary, 1925–1930; in Berlin from 1930, where he was also Dean of the Diplomatic Corps. p. 1238.

OSTER, Maj. Gen. Hans—Chief of the Central Division of the Bureau of Foreign Abwehr and chier assistant to Canaris; one of earliest military leaders of resistance movement; Ministry of War in new government to be established after end of Hitler regime was slated to go either to him or to Olbricht; placed under house arrest before 20 July 1944 attempt; after its failure was imprisoned by Gestapo and executed at Flossenburg concentration camp with Canaris, April 1945. pp. 1551, 1554, 1555, 1558–1560, 1568.

OTT, Lt. Gen. Eugen—German diplomat and general who was head of Far Eastern Section in Ministry of War, 1931; Military Attache in German Embassy in Tokyo, 1934; Ambassador to Japan, 1938–1942. p. 1451.

PAPEN, Franz von—German diplomat who was Military Attache at German Embassy in Washington and Mexico City, 1913–1915, and was expelled from U.S. for formenting sabotage; as member of Catholic Center Party became Reich Chancellor (succeeding Bruening), 1 June 1932–2 December 1932 (acting pro tem. 17 November–2 December) (succeeded by Schleicher); Vice Chancellor under Hitler, 30 January 1933–August 1934; Reich Commissar for Prussia, January–April 1933; Special Plenipotentiary for the Saar, November 1933–June 1934; negotiator of Concordat with Vatican, concluded 20 July 1933; German Ambassador to Austria, July 1934–February 1938; appointed Plenipotentiary Minister Extraordinary on special mission to Austria by Hitler, July 1936; awarded Golden Party Badge of Honor by Hitler after Anschluss, February 1938; Ambassador to Turkey, April 1939–August 1944. pp. 1130, 1149, 1150, 1167, 1168, 1177, 1410, 1411, 1449–1488.

PAUL (KARAGEORGEVITCH)—Nephew of King Peter I of Serbia; Prince Regent of Yugoslavia, 1934–1941, when Yugoslavia was occupied by Germans; when King Alexander I of Yugoslavia was assassinated at Marseilles in October 1934, his son Crown Prince Peter, aged 11, succeeded to the throne under a regency headed by Paul, as provided by Alexander's will, to last until Peter came of age. pp. 1185, 1640.

PETAIN, Marshal Henri-Philippe—French general who was Ambassador to Spain, 1939–1940; Vice Premier in Reynaud Government, May 1940; Chief of French State at Vichy after surrender to Germany, 1940–1944 (succeeding Paul Reynaud as Premier); tried and convicted of treason and collaboration, and sentenced to death in August 1945; sentence commuted to life

PHIPPS, Sir Eric—British Ambassador to Germany, 1933–1937 (succeeded by Henderson); to France 1937–1939. pp. 1497, 1501.

POHL, Oswald—Chief of the SS Economics and Administration Head Office (WVHA); Ministerial Director in Reich Ministry of Interior; SS Obergruppenfuehrer and General of Waffen SS; member of Board of Directors of Golleschauer Portland Zement. pp. 1123–1125, 1127, 1128, 1300–1302, 1304–1306, 1310, 1315, 1580–1605.

POPITZ, Johannes—Prussian Prime Minister of Finance, 1933–1934; a leading civilian member of the resistance movement; after failure of 20 July 1944 attempt, was arrested and tried before the People's Court; executed, February 1945. pp. 1554, 1568.

POTOCKI, Jerzy, Count—Polish diplomat who was aide-de-camp to Marshal Pilsudski, 1920; Senator from Tarnapol, 1930; Polish Ambassador to Rome, March 1933; Ambassador to Turkey, 1933–1936; Ambassador to U.S. and also accredited to Cuba, 1936–1940; now retired. pp. 1194, 1399.

PUHL, Emil—Member of Board of Directors of Reichsbank, 1935–1945; Vice President of Reichsbank, 1939–1945. pp. 1585–1587, 1591.

QUIRNHEIM, Col. Merz von—German General Staff Officer and Chief of Staff to Olbricht; participant in 20 July 1944 attempt; executed that night without trial on orders of Fromm. p. 1270.

QUISLING, Vidkun—Major in Norwegian Army General Staff; Minister of Defense, 1931–1933; leader of Nationalist Party; collaborated with Germans in preparations for German invasion and led Nazi 5th column inside Norway; became Chief of Norwegian Government under Nazi occupation, April 1940; appointed Premier, February 1942; tried and convicted of treason, and executed by firing squad on 24 October 1945. pp. 1174, 1326–1331, 1542–1544.

RAEDER, Grand Admiral Erich—Commander-in-Chief of German Navy (OKM), 1935–1943 (succeeded by Doenitz); Admiral Inspector of Navy 1943–1945; awarded Golden Party Badge of Honor, 1937; member of Secret Cabinet Council, 1938; member of Cabinet with rank of Reich Minister as chief of OKM, until 1943. pp. 1089, 1113, 1213, 1326, 1437–1441, 1541, 1546.

RAHN, Rudolf—German diplomat stationed in Ankara, Lisbon, Paris, 1931–1942; German Minister in Tunis on special mission, 1942–1943; Ambassador to Italy, December 1943–May 1945 (succeeding Mackensen). pp. 1655, 1656, 1662–1664, 1667, 1671, 1674, 1675.

RAUFF, Walter—SS Standartenfuehrer (Colonel); Chief of the Technical Department in Amt II of RSHA, in charge of gas van operations, 1942; later in charge of various SS operations in Italy under Wolff, including execution of hostages. p. 1658.

REICHENAU, Field Marshal Walter von—Chief of Staff to Blomberg in War Ministry, 1933–1935; one of the earliest and most zealous converts to Nazism among high military officers; tank warfare expert; supported Hitler during Roehm crisis, June 1934; Commanding General of 7th Army Corps, 1935; Commander of 10th Army in Polish campaign, 1939; Commander of 6th Army during western campaign, 1940; succeeded Rundstedt in December 1941 as Commander of Army Group South in Russian campaign; died of unascertained causes in the field, January 1942. p. 1460.

REINECKE, General of Infantry Hermann—Chief of the General Department of OKW, 1943; Chief of Nazi Party Guidance Staff in OKW, 1943; Honorary Member of Special Senate of People's Tribunal; one of judges in trial of participants in 20 July 1944 attempt; one of most fanatic and vicious Nazis among the high military. pp. 1606–1621.

RENTHE-FINK, Cecil von—German Minister in Copenhagen, 1940–1942 (succeeded by Werner Best); Special Envoy to Vichy Government, 1944. p. 1542.

RIBBENTROP, Joachim "von"—German importer who joined Nazi Party in 1932 and helped obtain business leaders' support for Hitler; after 1933 became Hitler's adviser on foreign policy, largely on disarmament questions; Ambassador at Large, 1935, and negotiated Anglo-German Naval Agreement; German Ambassador in London, 1936–1938; negotiated Anti-Comintern and Tripartite (Axis) Pacts, 1937; Reich Minister for Foreign Affairs, 1938–1945 (succeeding Neurath); Member of Secret Cabinet Council, 1938–1945; SS Obergruppenfuehrer, member of the Reichstag, 1933–1945; through adoption by maiden Aunt, Gertrud, in 1925 obtained right to use prefix, "von." pp. 1110, 1174, 1256, 1295, 1296, 1298, 1312, 1470, 1484, 1491, 1493, 1510, 1542, 1579, 1670, 1675.

RICHTHOFEN, Field Marshal Wolfram, Baron von—Served in Baron Manfred von Richthofen's famous Squadron in 1918; Chief of Staff of Condor Legion in Spain, 1936–1937; Commander of Condor Legion, 1938–May 1939; Commander of Air Fleet in Italy, 1943; Commander of 2d Air Fleet, April 1945. p. 1108.

RIETH, Kurt—German diplomat who served in Rome, 1922–1924, and Paris, 1924–1930; German Minister to Austria, 1931–1934 (succeeded by Papen); thereafter an official in the Foreign Office. pp. 1147–1149.

ROEHM, Capt. Ernst—One of earliest Nazi fighters and follower; co-founder of Nazi Party and SA; took part in 1923 Munich putsch; Supreme Commander of SA and one of Hitler's closest friends; played important part in bringing Hitler to power;

member of Reich Cabinet with rank of Minister; with several hundred others, was executed without trial on Hitler's orders during blood purge, 30 June 1934, on charge of conspiracy to overthrow Government, but actually in order to enable Hitler to consolidate his personal power by removing and terrorizing opposition; (succeeded as Supreme Commander of SA by Victor Lutze). p. 1288.

ROETTIGER, Lt. Gen.—Chief of Staff of German 4th Panzer (tank) Army, which was engaged in Polish and Russian campaigns. pp. 1655, 1657, 1662, 1664, 1665, 1670, 1671.

ROMMEL, Field Marshal Erwin—As an early Nazi, was attached to Hitler's bodyguard; commanded Fuehrer's Headquarters in Austrian, Sudetenland, and Czechoslovakia occupations, and during Polish campaign of 1939; Commander of 7th Panzer Division in France, 1940; Commanding General of Afrika Corps, December 1941–May 1943 (known as the "Desert Fox"); Commander-in-Chief in Northern Italy, 1943; Commander of Army Group B in France, November 1943–July 1944; joined resistance movement, when convinced German victory impossible, at 11th hour was compromised after failure of 20 July 1944 attempt and forced to commit suicide under threats transmitted from Keitel, October 1944. pp. 1256, 1259–1271, 1639, 1650, 1651.

ROOSEVELT, Franklin Delano—Assistant Secretary of Navy, 1913–1920; unsuccessful candidate for Vice President on Democratic ticket with James M. Cox, 1920; Governor of N. Y. State, 1928–1932; 31st President of the United States and inaugurator of the "New Deal", 1933–1945; died on 12 April 1945. pp. 1194, 1200, 1232, 1247, 1250.

ROSENBERG, Alfred—First editor of Nazi newspaper, "Voelkischer Boebachter," 1921; participated in 1923 Munich putsch; appointed Hitler's private envoy in London, 1933; Reichsleiter and head of Nazi Party Office for Foreign Policy and Ideology, 1933; Reich Minister for the Occupied Eastern Territories, 1941; SA Obergruppenfuehrer; member of the Reichstag; publisher of Party periodical, "Monatshefte"; official Nazi philosopher; author of "The Myth of the 20th Century" and other involved treatises on Nazi doctrine. pp. 1139, 1140, 1245, 1256, 1326–1356, 1361, 1397, 1427, 1490.

RUGE, Gen. Otto—Chief of the Norwegian General Staff, 1932; Supreme Commander of Norwegian Army during German invasion, April 1940; same position, 1945–1946. p. 1545.

RUNDSTEDT, Field Marshal Karl Rudolf Gerd von—Senior ranking officer of German Army (next to Goering); Commanded army group in Sudeten campaign, 1938; retired October 1938; recalled in summer and 1939 and led Army Group South in Polish campaign; led Army Group A in French campaign, April 1940–June 1941; Commander of Army Group South (Ukraine) in Russia, June–December 1941; recalled for Army Group D in France and Low Countries, March 1942–July 1944; Commander-in-Chief West, July 1942; "relinquished" command as Commander-in-Chief West in July 1944 (succeeded by Kluge); one of judges in trial of participants in

20 July 1944 attempt; recalled to post of Commander-in-Chief West, September 1944; German commander during "Battle of the Bulge", December 1944; relieved of command, March 1945 (succeeded by Kesselring). pp. 1266, 1271, 1274, 1284–1286.

SANJURJO, Gen.—One of Franco's lieutenants in Spanish Civil War; killed in airplane crash, 20 July 1936. p. 1506.

SAUCKEL, Fritz—Plenipotentiary General for Manpower (in Four Year Plan), 1942–1945; Gaulieter of Thuringia, 1927–1945; Reich Defense Commissioner; Reich Governor of Thuringia, 1933–1945; SS Obergruppenfuehrer, 1942–1945; SA Obergruppenfuehrer, 1937–1945; member of the Reichstag, 1933–1945. pp. 1122, 1128, 1383, 1387, 1395, 1441–1448, 1520, 1661, 1662.

SAUR, Otto Karl—Head of Technical Division in Armaments and Ammunition Branch of Reich Ministry of Armaments and War Production, under Speer; Chief of Staff and Leader of Mechanical Engineers in Head Office of Nazi Party German Technical League; appointed Minister of Armaments in Hitler's political testament, 29 April 1945. p. 1112, 1594.

SCHACHT, Hjalmar Greeley—German banker who secured support and contributions of industrialists in bringing Hitler to power, 1932–1933; President of Reichsbank, 1923–1939 (succeeded by Funk); Minister of Economics, 1934–1937 (succeeded by Funk); General Plenipotentiary for the War Economy, 1935–1937; Economic Director of Third Reich, 1936; author of system of "Mefo" financing which made possible German rearmament; Reich Minister without Portfolio, 1937–1943; arrested and interned in concentration camp in autumn, 1944; awarded Golden Party Badge of Honor, January 1937. pp. 1087, 1151–1154, 1461, 1554–1561, 1570, 1571.

SCHELLENBERG, Walter—Chief of Amt VI of RSHA (Foreign Political Intelligence Service), 1941–1945; Chief of Amt Mil of RSHA (which took over military intelligence functions of Abwehr from OKW), 1944–1945; SS Obergruppenfuehrer and General of Police and of Waffen SS; on behalf of Himmler negotiated unsuccessfully with Bernadotte in early 1945 for peace with the Western Allies. pp. 1303, 1314, 1317, 1621–1634.

SCHICKEDANZ, Arno—Chief of Staff in the Foreign Policy Office of the Nazi Party under Rosenberg; head of one of the Central Departments of the Reich Food Estate. p. 1329.

SCHLEICHER, Col. Gen. Kurt von—Executive officer to Seeckt as head of the Reichswehr, 1924; Under Secretary in Ministry of War under Groener, 1928–May 1932; Minister of War in Papen cabinet, June–December 1932; Chancellor of Germany, December 1932–January 1933 (succeeded by Hitler); murdered with his wife on 30 June 1934 during Roehm crisis. pp. 1410–1412, 1450–1452, 1454–1457, 1459, 1461, 1462, 1465–1467, 1547.

SCHMAUSER, Ernst Heinrich—SS Obergruppenfuehrer and General of Waffen SS; Higher SS and Police Fuehrer Southeast (8th Military District). p. 1600.

SCHMIDT, Guido—Foreign Minister of Austria in Schuschnigg government, 1936; long-time apostle of Austrian union with Germany; negotiated and signed on behalf of Austria the Austro-German Accord of 11 July 1936; present with Schusschnigg at Berchtesgaden on 12 February 1938 when Hitler delivered ultimatum. pp. 1136, 1251, 1499, 1502.

SCHMUNDT, Lt. Gen. Rudolf—Chief Wehrmacht Adjutant to Hitler, 1938–1944 (succeeded by Burgdorf); kept official minutes of Fuehrer's conferences and kept Hitler's military diary; Chief of Army Personnel Office in OKH until 1944 (succeeded by Burgdorf); killed by bomb explosion at Fuehrer's Headquarters in Rastenburg, East Prussia, on 20 July 1944. pp. 1117–1120, 1257.

SCHOERNER, Field Marshal Ferdinand—Took part in Polish campaign, 1939; Commander of a Mountain Regiment in Alsace, 1940; participated in Greek campaign, 1941; Commander of an Army Corps under Dietl on Murmansk Front, 1941; Commander of an Army Corps on Eastern Front, 1942–1943; Commander-in-Chief of Army Group A on Eastern Front, March–May 1944; Commander of Army Group South Ukraine on Eastern Front, May–July 1944; Chief of Nazi Party Guidance Staff for the Army, 1944 (succeeding Reinecke); Commander-in-Chief of Army Group Kurland on Eastern Front, July 1944–January 1945; Commander-in-Chief of Army Group Center on Eastern Front and temporary Commander-in-Chief of whole Eastern Front, February 1945; continued fighting in Bohemia after Germany's surrender in May 1945; known as a Nazi general; appointed Commander-in-Chief of the Army in Hitler's political testament, 29 April 1945. p. 1639.

SCHROEDER, Kurt, Baron von—Leading German banker who helped bring Hitler to power and contributed to Nazi Party; partner in J. H. Stein banking firm, Cologne; director of numerous industrial enterprises, including Thyssen Hytte, A.G.; President of Regional Economic Chamber for Cologne-Aachen; head of Economic Group Private Banks. pp. 1178, 1453, 1454, 1597, 1599.

SCHULENBURG, Friedrich Werner, Count von der—German Ambassador to the Soviet Union, 1934–1941; formerly Minister to Iran and to Rumania; joined resistance movement on return from Russia; advocate of German rapprochment with Russia; was slated to become Foreign Minister in new government after Nazis were overthrown if surrender negotiations were first undertaken with Russia; arrested and executed after failure of 20 July 1944 attmpt. p. 1188.

SCHUSSCHNIGG, Kurt von—Member of Austrian Parliament, 1927; Minister for Justice in Dollfuss cabinet, 1932; Chancellor of Austria, 1934 (succeeding Dollfuss), until March 1938, when he was ousted by Nazis after Anschluss (replaced by Seyss-Inquart); imprisoned in concentration camp by Nazis, 1938–1945. pp. 1130–1135, 1149, 1150, 1221, 1467, 1469, 1471–1474, 1499, 1501, 1502, 1508.

SCHWERIN von KROSIGK, Lutz, Count—Reich Minister of Finance in Papen, Schleicher, and Hitler governments, 1932–

1945; appointed Minister of Finance in Hitler's political testament, 29 April 1945, and served as such in Doenitz's government until surrender on 7 May 1945. pp. 1087, 1137, 1632.

SEECKT, Col. Gen. Hans von—Commander-in-Chief of German Army, 1920–1926; creator of the New German postwar Reichswehr (professional army of 100,000 men); father of blitzkrieg theory of warfare carried on by small, highly trained, mobile and armored units in place of ponderous non-professional mass armies; died on 27 December 1936. pp. 1547, 1552.

SELDTE, Franz—Reich Minister of Labor, 1933; Labor Minister of Prussia; member of the Reichstag; SA Obergruppenfuehrer; former leader of the Stahlhelm (organization of ex-servicemen which was largely taken into the SA in 1933.) p. 1387.

SEYSS-INQUART, Arthur—Austrian lawyer who was Nazi sympathizer and worked for Aschluss; appointed Councillor of State by Schusschnigg, May 1937, to appease Austrian Nazis; appointed Minister of Interior and Security on Hitler's demand, February 1938; Post-Anschluss Chancellor of Austria, 11–15 March 1938; Reich Governor of Ostmark (Austria), 15 March 1938–1 May 1939; Reich Minister without Portfolio, May–September 1939; Chief of Civil Administration of South Poland, September 1939; Deputy Governor General of Occupied Poland under Hans Frank, October 1939–May 1940; Reich Commissioner for Occupied Netherlands, May 1940–1945; SS Obergruppenfuehrer, 1938–1945; member of the Reichstag, 1938–1945; member of Reich Cabinet, May 1939–1945; appointed Foreign Minister in Hitler's political testament, 29 April 1945. pp. 1131–1134, 1467, 1468, 1487, 1488, 1502.

SIMON, Sir John Allsebrook (First Viscount of Stackpole Elidor, 1940)—British Conservative Party member who was Solicitor General, 1910–1913; Attorney General, with seat in Cabinet, 1913–1915; Secretary of State for Home Affairs, 1915–1916; Secretary of State for Foreign Affairs, 1931–1935; Secretary of State for Home Affairs and Deputy Leader of the House of Commons, 1935–1937; Chancellor of the Exchequer, 1937–1940; Lord Chancellor, 1940–1945. p. 1175.

SIMOVIC, Gen. T. Dushan—Yugoslav officer who was Commander-in-Chief of Air Force, 1936–1938 and 1940; Chief of General Staff, 1938–1939; led Coup d'etat in Belgrade, 27 March 1941, against regime of Prince Paul and against Yugoslav participation in war on side of Axis; Prime Minister of Yugoslavia, Minister of Interior, Minister for Air Force and Navy, Deputy Minister for War, and Commander-in-Chief of Yugoslav Armed Forces, 1941–1942. pp. 1183, 1192.

SKORZENY, Otto—Chief of Group S in Amt VI of RSHA under Schellenberg, 1943; daring and ruthless SS Colonel who rescued Mussolini in October 1943; reported to have led group who infiltrated behind American lines to kidnap and assassinate high personages, including Eisenhower; entrusted by Himmler with task of tracking down conspirators in 20 July 1944 attempt; in charge of SS terrorist and sabotage bands; kidnapped Horthy's son, 1944. pp. 1314, 1633.

SPEER, Albert—German architect who designed decorations for Party rallies and various public buildings constructed by Nazis; Inspector General for Rebuilding of Berlin, 1937; Prussian State Councillor, 1938; Reich Minister for Armaments and War Production and head of Organization Todt (succeeding Todt), February 1942–1945; General Plenipotentiary for Armaments in Four Year Plan, 1942–1945; Head of Armaments Office of German High Command, 1942–1945; member of Central Planning Board, Reichsleiter and Chief of the Nazi Party Technical Office; member of the Reichstag; awarded Golden Party Badge of Honor; broke with Hitler over continuation of war in early 1945 and refused to carry out Hitler's orders to destroy factories and scorch the earth; planned to assassinate Hitler by introducing poison gas into ventilating system of the Fuehrer's air-raid bunker, but was unable to carry out plan. pp. 1087, 1112, 1113, 1121, 11277, 1128, 1291, 1292, 1298, 1382, 1580, 1581, 1592—1595, 1620, 1621.

SPEIDEL, Lt. Gen. Hans—Chief of Staff of Army Group B on Western Front under Rommel, 1944; arrested by the Gestapo after 20 July 1944; freed at end of war. p. 1267.

SPERRLE, Field Marshal Hugo—Commander of Condor Legion in Spain, 1936–1937; Commander "West", 1939; Commander of 3rd Air Fleet, 1939–1944; participated in Western campaign, 1940; in charge of air operations against Great Britain, 1940–1941. p. 1635.

STALIN, Josef Visarionovitch Dzhngashvili—Generalissimo and Premier of Soviet Union; Chairman of Council of People's Commissars; Secretary of All-Union Communist Party; member of Political Bureau of Central Committee of Party (Politburo); Commander-in-Chief of Soviet Armed Forces and Army; President of the Council of Ministers. pp. 1110, 1187, 1189, 1190, 1192, 1194, 1204, 1228, 1243, 1249.

STAUFFENBERG, Col. Claus Schenk, Count von—Chief of Staff of Replacement Training Army under Fromm, and liaison officer between that army and Hitler's Headquarters, 1944; active participant in resistanct movement; set off the bomb at Hitler's Headquarters in Rastenburg, East Prussia, 20 July 1944; executed without trial on orders of Fromm that night in Berlin. p. 1270.

STINNES, Hugo—Leading German publisher and Ruhr industrialist who supported Nazis and helped Hitler come to power; through widely ramified holdings controlled an industrial empire; chairman of board of directors of Muelheimer-Bergwerk-Verein; director of numerous other heavy industries. p. 1524.

STREICHER, Julius—Editor and publisher of "Der Stuermer", 1922–1933; thereafter publisher and owner; former Nurnberg school teacher who formed a Party called the German Socialist Party, whose chief policy was anti-Semitism, and delivered it to Hitler in 1922; thereafter became Nazi agitator and member of Party; Gauleiter of Franconia, 1925–1940, when he was dismissed by Hitler; member of the Reichstag, 1933–1945; SA Obergruppenfuehrer; publisher of daily newspaper, "Fraenkische Tageszeitung," 1933–1945; known as Germany's No. 1 Jew-baiter. pp. 1239, 1284, 1420–1437.

STRESEMANN, Gustav—Head of German National Liberal Party (middle-of-the-road) who was Chancellor of Germany, August–November 1923; Foreign Minister, 1923–1920; outstanding political leader during Weimar Republic; died in October 1929. p. 1566.

STUELPNAGEL, General of Infantry Heinrich von—Commander of 17th German Army on Eastern Front, February–October 1941; Military Commander in Occupied France, 1942–1944 (succeeding his cousin Otto, who served 1940–1942); was informed in advance of 20 July 1944 attempt and supported it by arresting Nazi and SS leaders under his command in Paris but was compromised by vacillation of Kluge, his superior; ordered to Berlin, he stopped en route at Verdun and attempted to shoot himself but succeeded only in wounding and blinding himself; he was taken to a hospital, tortured, and strangled to death. pp. 1260, 1568, 1570, 1571.

STUMPFF, Col. Gen. Hans-Juergen—Head of Personnel Department of Luftwaffe, 1933–1937; Chief of General Staff of Luftwaffe, 1937; Chief of Air Defense, February 1939; Commander of 1st Air Fleet, 1940; Commander of 5th Air Fleet in Norway and Finland, 1940–1945; Commander-in-Chief of Air Fleet "Reich", 1944–1945; member of the People's Tribunal. p. 1545.

SZTOJAJ, Field Marshal Doeme—Former Austro-Hungarian officer who was Hungarian Minister in Berlin; on German occupation of Hungary, March 1944, became Premier and Foreign Minister of puppet cabinet which fell on 29 August 1944 (succeeded by Col. Lakatos). p. 1210.

TERBOVEN, Josef—Took part in Munich putsch, 1923; leader of SA and Nazi Party in Essen, 1925; Gauleiter of Essen, 1928–1945; Head of Rhine Province, 1936; President of 2 large Thyssen industrial concerns, 1940; Reich Commissioner for Occupied Norway, 1940–1945; SS Gruppenfuehrer; member of the Reichstag; Prussian State Councillor; committed suicide in Norway, May 1945. pp. 1290, 1327, 1330, 1544.

THOMAS, General of Infantry Georg—Professional German officer who was for long time liaison man between industry and army; Chief of Economy and Armaments Division of OKW; member of the Armaments Council; Director of the Herman Goering Works, Continental Oil, United Aluminum Works, and other industries; founded and headed Armaments Division of Ministry of Armaments until 1942; one of early military leaders of underground, and only survivor of ringleaders; after failure of 20 July 1944 attempt was sent to a concentration camp; liberated by Allied forces, April 1945. pp. 1568–1571.

THYSSEN, Fritz—Ruhr steel magnate whose financial backing helped Hitler come to power; President of the Reichsverbaend der Industrie; chief shareholder of Vereinigte Stahlwerke (German steel trust); lost out to his competitors, Friedrich Flick and Hermann Goering Works; member of the Reichstag; Prussian State Councillor; fled from Germany in 1939. pp. 1483, 1484.

TIMOSHENKO, Marshal Semyon Konstantinovich—Marshal and Hero of Soviet Union; member of Supreme Soviet of USSR; Soviet Commander-in-Chief on Western Front, July–November 1941; People's Commissar of Defense, May 1940–June 1941; in command of operations on south and southwest fronts, 1941–1942, on northern front, 1943, on 2nd and 3rd Ukrainian fronts, 1944; member of Central Committee of All-Union Communist Party since 1939; decorated for operations in Finland, 1939. pp. 1287.

TITO, Marshal (Josif Broz)—Prime Minister, Minister of National Defense, and Dictator of Yugoslavia, since 1945; served in Red Army, 1917–1921; returned to Yugoslavia and took prominent part in activity of illegal Yugoslav Communist Party; sentenced to 4 years imprisonment for conspiracy, 1923; recruited Yugoslovs for International Brigade in Spanish Civil War, 1936–1937; leader of Paritsans in war against Germany, 1941–1945; Chairman of Committee of National Defense in Provisional Regime of Partisans established on 4 December 1943 in opposition to German-in-Exile in London; President of National Liberation Committee, 1943; assumed power on defeat and withdrawal of German troops from Yugoslavia, March 1945. pp. 1637–1639.

TODT, Prof. Dr. Fritz—Reich Minister of Munitions, 1940–1941; Minister of Armaments and War Production on creation of ministry, 1941; head of Organization Todt (OT) (labor battalions which built fortifications and repaired bridges and roads in rear of army); General Deputy for Building and Construction in Four Year Plan; Reichsleiter; as Inspector General of Road Construction, built network of autobahns (super-highways); constructed Siegfried Line ("Westwall") opposite Maginot Line, and commenced building of Ostwall as counter to the Stalin line in the East; killed in airplane crash, 1942, and succeeded in all his offices by Speer. pp. 1113, 1298.

VANSITTART, Sir Robert Gilbert (1st Baron of Denham, 1941) —Brittish diplomat stationed in various capitals, 1902–1930; Permanent Under Secretary of State for Foreign Affairs, 1930–1938; Chief Diplomatic Adviser to Foreign Secretary, 1938–1941; Privy Councillor, 1940; one of leading British statesmen, who warned against rising menace of Hitler's pan-Germanism in 1930's. p. 1215.

VICTOR EMMANUEL III—King of Italy (House of Savoy), 1900–1946; refused to halt Mussolini's march on Rome, October 1922, and invited him to head Italian Government; Emperor of Ethiopia, 1936, and King of Albania, 1939, as result of Italian conquests; abdicated on 9 May 1946 in favor of his son, Crown Prince Humber; died in exile in Egypt, 28 December 1947. p. 1477.

VIETINGHOFF-SCHEEL, Col. Gen. Otto-Heinrich von—Commanded Panzer Division in Polish campaign, 1939; Commander of any Army Corps in French campaign, 1940; commanded an armored Army Corps which took active part in overrunning Serbia, 1941; Commander of 15th Army on Western Front, February 1942–August 1943; Commander of 10th Army and

Army Group C in Italy, September 1943–April 1945; Commander-in-Chief South, April 1945 (succeeding Kesselring); with Wolff, negotiated unconditional surrender of all German forces in Italy, April 1945. pp. 1648, 1655, 1656, 1662, 1664.

WAECHTER, Gustav—Former Viennese dentist who was leader of putsch in which Dollfuss was assassinated, July 1934; escaped to Hungary with false papers issued by Himmler; reached Berlin, where helped plan invasion of Austria; returned to Vienna in 1938 and practiced law; appointed District Governor of Lwow in General Government of Poland under Hans Frank, 1939–1945; SS Gruppenfuehrer. p. 1661.

WAGNER, General of Artillery Eduard—Quartermaster General of German Army; one of leading military participants in resistance movement from its beginning; took part in 20 July 1944 plot and was executed thereafter. pp. 1554, 1559, 1560, 1568, 1571.

WAGNER, Josef—Reich Price Commissioner; Gauleiter and Governor of Silesia until 1940, when dismissed by Hitler for insufficient radicalism; was thought to be implicated in affair of 20 July 1944 and executed early in 1945; (not to be confused with Robert Wagner, old-time Nazi and Gauleiter of Baden). p. 1443.

WARLIMONT, Lt. Gen. Walter—Deputy Chief of the Armed Forces Operations Staff (OKW) under Jodl, and head of Joint Planning Staff in that office in charge of strategic planning and plans for future operations, until 1944. pp. 1312, 1313, 1319, 1320, 1322, 1560, 1608, 1617, 1634–1640.

WEIDLING, Lt. Gen. Helmuth—Commander of 86th Infantry Division engaged on central sector of Russian front, 1941–1945. pp. 1290, 1291.

WENCK, Maj. Gen. Walter—Commander of 12th Army on Eastern Front, April-May 1945; was fighting on Elbe, southwest of Berlin, during last days before capture of Berlin; was ordered by Hitler to come to relief of Berlin and the Fuehrer's Headquarters but was unable to do so because of shattered condition of his forces. pp. 1277–1283.

WESTHOFF, Maj. Gen. Adolf—Chief of the Prisoner of War Information Bureau. pp. 1321, 1641–1647.

WESTPHAL, Maj Gen. Siegfried—Chief of Staff to Kesselring; appointed Chief of Staff to Rundstedt after purge following 20 July 1944 attempt. pp. 1647–1652.

WILSON, Sir Horace John—British high civil servant who was Permanent Secretary in Ministry of Labor, 1921–1930; Chief Industrial Adviser to H. M. Government, 1930–1939; seconded to the Treasury for service with the Prime Minister, 1935; as confidential adviser to Chamberlain, was his companion and emissary in conferences with Hitler at Berchtesgaden, Godesberg, and Munich in September 1938; Permanent Secretary of H. M. Treasury and official head of H. M. Civil Service, 1939–1942. pp. 1251, 1253, 1254.

WINKLER, Hermann—German industrialist and former democratic member of Prussian Parliament who became Nazi in

1933 and assisted Amann in nazifying the German press; acted as intermediary between publishers and Ministry of Propaganda, of which he was official; also assisted Goebbels in nazifying German film industry. pp. 1524–1526, 1530.

WINTER, Lt. Gen. Paul—Deputy Chief of Armed Forces Operations Staff (OKW) under Jodl (succeeding Warlimont), September 1944–May 1945. p. 1276.

WITT, Fritz—SS Oberfuehrer (Colonel) who was Chief of Staff to Wolff in Italy, 1943–1945; formerly Commander of SS Division "Hitler Jugend." p. 1655.

WITZLEBEN, Field Marshal Erwin von—Commander of Berlin Military District, 1938; retired 1940; one of earliest and leading military members of underground; was slated to take general command of all German armed forces and direct command of army after assassination of Hitler and overthrow of Nazi regime; after failure of 20 July 1944 attempt, was tried before People's Court in first trial of conspirators, with Hoepner and others; executed in August 1944. pp. 1270, 1551–1553, 1555, 1557, 1559–1561.

WOLFF, Karl—SS Obergruppenfuehrer and General of Waffen SS at Fuehrer's Headquarters; Chief of Personal Staff of Reichsfuehrer SS (Himmler); Himmler's liaison officer with Hitler's headquarters until 1944 (succeeded by Fegelein); Personal Adjutant to Himmler, 1941; Chief SS and Police Commander in Italy, September 1943; founder and commander of Italian SS Legion, February 1945; with Vietinghoff, negotiated unconditional surrender of all German forces in Italy, April 1945. pp. 1205, 1206, 1575, 1598, 1599, 1652–1677.

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